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Publications



Second Session—Twenty-seventh Parliament

1967-68

THE SENATE OF CANADA  
PROCEEDINGS  
OF THE  
SPECIAL COMMITTEE  
ON THE  
CRIMINAL CODE

(Hate Propaganda)

The Honourable J. HARPER PROWSE, *Chairman*

No. 1

*First Proceedings on Bill S-5*

intituled:

“An Act to amend the Criminal Code”.

WEDNESDAY, FEBRUARY 14th, 1968

WITNESS:

*Department of Justice: J. A. Scollin, Director, Criminal Law Section.*

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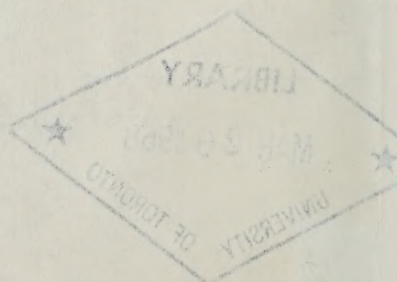
THE SPECIAL COMMITTEE ON THE CRIMINAL CODE (Hate Propaganda)

The Honourable J. Harper Prowse, *Chairman*

The Honourable Senators:

Boucher	Laird
Bourque	Lang
Carter	Lefrançois
Choquette	O'Leary ( <i>Carleton</i> )
Croll	Prowse
Fergusson	Roebuck
Gouin	Thorvaldson
Hollett	Walker
Inman	White—(18).

(Quorum 5)



## ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 2nd, 1967:

"The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Bourget, P.C.:

That a Special Committee of the Senate be appointed to study and report upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5 intituled: "An Act to amend the Criminal Code"; and

That the Committee have power to call for persons, papers and records, to examine witnesses, to report from time to time, and to print such papers and evidence from day to day as may be ordered by the Committee, and to sit during sittings and adjournments of the Senate.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

*With leave,*

*The Senate reverted to Notices of Motions.*

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Bourget, P.C.:

That the Special Committee of the Senate appointed to study and report upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5, intituled: "An Act to amend the Criminal Code", be composed of the Honourable Senators Boucher, Bourque, Carter, Choquette, Croll, Fergusson, Gouin, Hollett, Inman, Laird, Lang, Lefrançois, Méthot, O'Leary (*Carleton*), Prowse, Roebuck, Thorvaldson and Walker.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division."

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 21st, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Deschatelets, P.C., for second reading of the Bill S-5, intituled: "An Act to amend the Criminal Code".

After debate,

In amendment, the Honourable Senator Flynn, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be not now read the second time but that the subject-matter thereof be referred to the Special Committee of the Senate appointed to study and report upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5, intituled: "An Act to amend the Criminal Code".

After debate, and—

The question being put on the motion, in amendment, it was—

Resolved in the negative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Special Committee of the Senate on Hate Propaganda.

The question being put on the motion, it was—

Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Wednesday, December 6th, 1967:

"With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Macdonald (*Cape Breton*):

That the name of the Honourable Senator White be substituted for that of the Honourable Senator Methot on the list of Senators serving on the Special Committee on the Criminal Code (Hate Propaganda).

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MACNEILL,

*Clerk of the Senate.*

## MINUTES OF PROCEEDINGS

WEDNESDAY, February 14th, 1968.

(1)

Pursuant to adjournment and notice the Special Committee on the Criminal Code (Hate Propaganda) met this day at 10.00 a.m.

*Present:* The Honourable Senators Prowse (*Chairman*), Bourque, Carter, Croll, Fergusson, Gouin, Hollett, Inman, Laird, Lang, Lefrançois and Roebuck. —(12).

*In attendance:* E. Russell Hopkins, Law Clerk and Parliamentary Counsel. R. J. Batt, Assistant Law Clerk and Parliamentary Counsel, and Chief Clerk of Committees.

Upon motion—*Ordered* that 800 English and 300 French copies of the day to day proceedings of the Committee be printed.

Bill S-5, "An Act to amend the Criminal Code", was considered, clause by clause.

### WITNESS:

*Department of Justice:* J. A. Scollin, Director, Criminal Law Section.  
At 12 Noon the Committee adjourned to the call of the Chairman.

Attest.

Frank A. Jackson,  
*Clerk of the Committee.*

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# THE SENATE

## SPECIAL COMMITTEE ON CRIMINAL CODE (HATE PROPAGANDA)

### EVIDENCE

Ottawa, Wednesday, February 14, 1968

The Special Committee of the Senate, to which was referred Bill S-5, to amend the Criminal Code, met this day at 10 a.m. to give consideration to the bill.

**Senator J. Harper Prowse (Chairman)** in the Chair.

**The Chairman:** We have a quorum. The suggested agenda for the moment is as follows: Item No. 1 is the question of the number of copies of the committee proceedings to be printed and I will entertain a motion for the usual number of 800 in English and 300 in French.

The committee agreed that a verbatim report be made of the committee's proceedings on the bill.

The committee agreed to report recommending authority be granted for the printing of 800 copies in English and 300 copies in French of the committee's proceedings on the bill.

The next item is, if it is agreeable to you, as follows: I had meetings scheduled for Tuesday and Thursday. Dean Cohen was going to come on Tuesday, but there has been a special meeting called by the principal of the university and so he cannot come at the time arranged. Therefore he will be here at 9.30 on Thursday if that is agreeable to the committee, and he will be followed by Mr. Hayes of the Canadian Jewish Congress who has sent us books on comparative legislation which I think all members of the committee have received or will receive. They will be here on Thursday of next week.

Mr. P. Laundy, Chief of the Research Branch of the Library is out of the city at the moment but if it is agreeable to the committee I thought that rather than call him at a time that would clash with caucus, we could call a meeting, say, at one o'clock on a Wednesday so that we may hear him. He has done a great deal of research and has some

material prepared on comparative legislation and the way it has been applied, and this I think would be helpful in assessing the legislation we have in front of us. In any event, for Wednesdays I will try to call the meetings for one o'clock or 1.30 rather than have them in the morning when they might clash with other committees or with caucus. Is that agreeable?

**Hon. Senators:** Agreed.

**Senator Croll:** This book that you mentioned, I have not yet received a copy.

**Senator Inman:** Neither have I.

**The Chairman:** Those who have not received it will receive a copy.

**Senator Croll:** Surely we should have it before the witness comes on Thursday so that we can do some study on it.

**The Chairman:** We will see that it is distributed to members of the committee this week. It is certainly desirable that you should have it ahead of time. May I also seriously commend to you that, if you have not already done so, you should read the Cohen Report because it will make the work of the committee that much simpler and that much more useful. It contains some excellent material, particularly the appendices which will give a background and which will save us calling witnesses who would be giving us mainly technical information.

I call Mr. J. A. Scollin this morning, and the procedure I would suggest to you, subject to your agreement, is this. Mr. Scollin is the Director of the Criminal Law Section of the Department of Justice, and was, I believe, responsible for the drafting of the legislation—or, at least, participated in its drafting.

I have asked Mr. Scollin to go through the bill and explain the purposes of each section, and then to deal with the question of other legislation and the gaps this bill is intended

to fill. I think it would be much more useful if we let him go ahead and give his explanation first; and when he has completed that explanation he will be available for any questions; otherwise we get a record that is practically impossible for anyone to make any sense of.

**Mr. J. A. Scollin, Director, Criminal Law Section, Department of Justice:** Mr. Chairman, members of the committee: the bill is divided into four main topics. The first area deals with the advocating or promoting of genocide, which is proposed section 267A. The second area is the proposed section 267B(1). The third area is the willful promotion of hatred, whether in public or in private, which is section 267B(2). And the fourth area is what is called *in rem* proceedings, proceedings against the publications themselves, which is proposed section 267C.

The bill follows the main lines of the draft legislation suggested in what is called the Cohen Report, at pages 69 and 70.

The portion dealing with the *in rem* proceedings, with the seizure and trial of the publications themselves, was not expressly provided for by the Cohen committee, but is patterned on the *in rem* proceedings that are presently used in the case of obscene literature, in amendments which were introduced in the Code in 1959 and which appear as section 150A of the present Criminal Code. These *in rem* proceedings in proposed section 267C follow exactly the pattern already established in section 150A in the case of obscene literature.

Dealing first of all with section 267A, the advocating or promoting of genocide, this, of course, is a completely new proposed offence in the Code. Murder itself, whether murder of an individual or murder of a number of individuals, is already, of course, in the Criminal Code. Counselling or procuring murder or conspiracy to murder, these are also offences under the Code. But there is nothing in the Code which prohibits the advocacy or promotion of genocide as defined in section 267A(2).

Section 267A(1) makes this an indictable offence punishable by imprisonment for five years. Subsection 2 is the definition of "genocide," and perhaps here I could indicate some variations from the recommended definition in the Cohen Report. The Cohen Report suggested definition of "genocide" appears at the

bottom of page 69 of the report. First of all, it says that:

"Genocide" means any of the following acts...

The proposed definition here says:

In this section "genocide" includes ...

So that, for a start, instead of "means" the proposed legislation here uses the word "includes" as indicating a more comprehensive group of acts.

Secondly, the Cohen Report goes on:

... means any of the following acts committed with intent to destroy in whole or in part,  
... which is the same as the proposal under subsection 2.

The Cohen Report then uses the words:

any identifiable group.

In the legislation here proposed the words are "any group", not just "any identifiable group".

Under Bill S-5 any group, whether in fact it falls within the definition of an identifiable group...

**Senator Roebuck:** If a group is not identifiable, what is the use of calling it a group?

**Mr. Scollin:** The group here would cover a group which is distinguished by, for example, national origin, a group which is distinguished by religious origin—any grouping of persons would be covered under "genocide" and not just an "identifiable group"—words which are used with an express meaning in the bill in proposed Section 267B.

"Identifiable group", which is used elsewhere in Bill S-5, is defined on the second page of the bill, in subsection (5)(b) as:

... any section of the public distinguished by colour, race or ethnic origin;

So without more comment on that I simply point out that "any group" has been substituted for "any identifiable group".

There are then listed five types of act in subsection (2). The Cohen Report at the bottom of page 69 and the top of page 70 refers only to three sets of act. The three sets recommended by the Cohen Report are, first, killing members of such a group—this corresponds to section 267A(2)(a)—second, deliberately inflicting on such a group conditions of life calculated to bring about its physical destruction—which corresponds to Section 267A(2)(c)—and, third, deliberately imposing measures intended to prevent births within

such a group—which corresponds to section 267A(2)(d) in Bill S-5.

So, there are two additional categories of act that are covered by the proposed bill but which are not contained in the recommendations of the Cohen committee, and they are to be found in paragraphs (d) and (e) of the proposed new section 267A(2). Paragraph (d) is:

deliberately imposing measures intended to prevent births within the group

and paragraph (e) is:

forcibly transferring children of the group to another group.

The explanation given by the Cohen committee for deliberately omitting those two categories is set out at page 61 of the report, where the committee says:

For purposes of Canadian law we believe that the definition of genocide should be drawn somewhat more narrowly than in the international Convention so as to include only killing and its substantial equivalents...

Bill S-5 follows the international Convention rather than the Cohen Report. The committee goes on to point out:

The other components of the international definitions, viz., causing serious bodily or mental harm to members of a group...

that is section 267A(2)(b)

... and forcibly transferring children of one group to another group with intent to destroy the group...

and that is section 267A(2)(e)

... we deem inadvisable for Canada—the former ...

that is, causing serious bodily or mental harm to the members of the group

... because it is considerably less than a substantial equivalent of killing in our existing legal framework, the latter...

that is, forcibly transferring children of one group to another group

... because it seems to have been intended to cover certain historical incidents in Europe that have little essential relevance to Canada, where mass transfers of children to another group are unknown.

In fact, the bill has followed the international Convention, to which Canada is a party.

I will go on, Mr. Chairman. I am simply endeavouring to draw attention to the distinctions themselves.

Section 267B(1) creates an offence which is either an indictable offence being punishable by imprisonment for a maximum term of two years, or an offence that is punishable on summary conviction. It will be at the option of the Crown to decide which way it will proceed. If it proceeds by way of summary conviction then the ordinary provisions of the Criminal Code would apply, and the penalty would be imposed under section 694 of the Code, namely, a fine of not more than \$500 or imprisonment for six months, or both.

**The Chairman:** Proceeding by way of indictment would give the person charged the right to trial by jury?

**Mr. Scollin:** That is right, this would give the accused, in the case of an indictable offence, the option of being tried before a magistrate, or before a judge without a jury, or before a judge and a jury.

The ingredients of the offence are, first, the communication of statements; second, that the communication be in a public place; third, that there be incitement to hatred or contempt; fourth, that the hatred or contempt incited should be against an identifiable group; and, fifth, that the incitement is likely to lead to a breach of the peace.

Now, first of all, "statements" you will see defined in subsection (5) of section 267B, as follows:

"statements" includes words either spoken or written, gestures, signs or other visible representations.

In this respect the definition has followed in full the definition recommended by the Cohen committee at page 70 of the report.

Subsection (5) defines also "public place", and it again is exactly the same as the definition recommended by the Cohen committee at page 70, and it is, in fact, the same as the definition already contained in the Criminal Code for the purposes of one of the other parts. I am referring here to section 130(b) of the Code. It is exactly the same definition.

**The Chairman:** What do those sections in Part IV deal with?

**Mr. Scollin:** Section 130 appears in Part IV of the Criminal Code, which deals with sexual offences, public morals and disorderly conduct, and the definition is given for the purposes of that Part.

The proposal in regard to the locating of these sections in the Criminal Code is that

they would appear in Part VI, which deals with offences against the person and reputation.

**Senator Fergusson:** Is that section 130?

**Mr. Scollin:** That is section 130. The meaning of "identifiable group" for the purposes of this section is also given in subsection (5) paragraph (b) of section 267B of the bill, and it differs from the definition recommended by the Cohen Report. The definition recommended by the Cohen Report appears on page 70 and reads:

"Identifiable group" means any section of the public distinguished by religion, colour, race, language, ethnic or national origin.

The two omissions from the definition in Bill S-5 as distinguishing marks are religion and national origin.

**The Chairman:** Language too.

**Mr. Scollin:** Yes, language also. That leaves only three tests—colour, race or ethnic origin.

Perhaps a short explanation here would be useful. It is considered that "ethnic" covers "national," that so far as Canadian conditions are concerned the word "ethnic" covers the total ground that need be covered. This was the view taken. With regard to the word "religion," it was considered that since this is a matter which can be the subject of and changed by debate and discussion, even of a very vigorous and brutal form, religion as distinct from the other attributes ought not to be a test. The other tests, of colour, race or ethnic origin, are immutable, they are matters which cannot be changed by debate in any way, and the same is basically true of language.

It might be opportune to point out that on page 97 of the Cohen Report, where the committee deals with the United Kingdom Race Relations Act, which uses the tests of colour, race, ethnic or national origins, the report says that religion is a significant omission, and goes on to point out:

It is believed by the government...

That is the government of the United Kingdom...

that despite this omission anti-Semitic propaganda will be covered because it is said to go beyond religion and attack Jews as members of an ethnic group whether they are believers or not, and that the omission has the positive advantage

of leaving open to continuing controversy all questions of a religious or doctrinal nature.

**Senator Fergusson:** How is this dealt with in the international convention?

**Mr. Scollin:** On page 293 of the Cohen Report there is reproduced the Universal Declaration of Human Rights which was adopted by the U.N. General Assembly in 1948, and the tests are set out in Article 2 as the basic freedoms without distinction of any kind. The examples they give as distinctions are:

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

On page 298 of the report there appears the United Nations Declaration on the Elimination of all Forms of Racial Discrimination adopted by the General Assembly in 1963, the first paragraph of which specifies:

without distinction as to race, sex, language or religion.

It then recites back to the 1948 Universal Declaration of Human Rights in the second paragraph. You will notice that towards the bottom of page 298 it says:

Taking into account the fact that, although international action and efforts in a number of countries have made it possible to achieve progress in that field, discrimination based on race, colour or ethnic origin in certain areas of the world none the less continues to give cause for serious concern.

There they have used the three basic tests of race, colour or ethnic origin, which is the test set out in paragraph (b) of subsection (5) of section 267B of the bill.

**Senator Fergusson:** In the second paragraph of the Declaration on the Elimination of all Forms of Racial Discrimination it says:

race, colour or national origin.

what is the real meaning of the word "ethnic"?

**Mr. Scollin:** "Ethnic" would have the same meaning as it has on page 298, in Article 30.

For example, a person's national origin could be British. In the case of a negro of British origin, I would say his ethnic connections would be negroid but his national origin would be British. I would think that the word "ethnic" is pretty well understood in Canada as having a pretty specific meaning.

**Senator Fergusson:** I know what it means and what we generally accept it to mean. I just wondered if there was some special meaning.

**The Chairman:** I would think the task of definition of these things is such that if we start to define every word we will have a very long bill. The word is in general use and we can take it that that covers its use here.

**Senator Lang:** What is the root?

**The Chairman:** Ethos.

**Senator Hollett:** In Canada, does it not apply more to a national group?

**The Chairman:** I think it is used substantially in Canada to cover "national," or what ordinarily in other places and in earlier times we would have called "national". We now talk of "ethnic" groups, groups of ethnic divisions, being the nation of origin.

**Senator Hollett:** What is it to mean in this bill? Is it going to mean "national origin" or, as the learned gentleman pointed out, has it to do with something else. You spoke of the coloured person who is British.

**Senator Laird:** Perhaps the example might be this, that both the Jews and the Syrians are semites. Now, what is the ethnic origin? Is it semite or is it Jewish or is it Syrian? This could be important, because this is an act directed against a group, so the distinction could become important.

**The Chairman:** We will send up for the dictionary. The ordinary procedure is that where a word is not defined the ordinary use of it will be taken by the courts. I would say the answer to your example is that Jewish and Syrian are two different ethnic origins.

**Senator Laird:** That is what I am wondering.

**The Chairman:** I think the term "semite" is a broader one and probably comes under "race," does it not?

**Senator Carter:** It would not matter, would it, so long as the group can be identified as being ethnic? The origin does not matter, whether they are Syrians or Jews.

**Mr. Scollin:** I would say that some group may fall within the test of all three. It may be distinguished by colour and by race and by ethnic origin—all three.

**Senator Laird:** What I am thinking of, as a lawyer, is the possibility of a technical defence. Supposing you say that the offence is alleged against a semite group, or supposing it is Jews, alleged against the Jewish group, and there is a combination of the two. This can give rise to a technical offence under the Criminal Code.

**The Chairman:** There will be undoubtedly technical defences devised, Senator Laird, if the act comes into use, but I would think that the word "ethnic" in the last ten years at least in Canada has been used so broadly that it has a pretty clear meaning as far as most people are concerned. I do not think it would give the court much trouble.

**Senator Laird:** Yes, but can a court take judicial notice of that?

**The Chairman:** They can take judicial notice of the dictionary meaning.

**Senator Laird:** Yes, but can they take judicial notice of the popular feeling as to what the word means? I doubt it.

**The Chairman:** I would think they can. It would make a good argument.

**Senator Laird:** It is worth a counsel fee.

**The Chairman:** However, that is a matter we can deal with later. We are clear now as to what the bill says here and we can go on with it. We can take this as a question to be considered. If honourable senators would note the questions, we can deal with them later so as not to break into the whole picture which we are trying to get first.

**Mr. Scollin:** If the spirit of the bill is clear and it is given a proper liberal interpretation, which the Interpretation Act says should be given, this is not an area of real doubt.

**Senator Hollett:** What about the Conservative application? You said the "Liberal" application. You did not mean it that way.

**The Chairman:** This is "liberal" with a small "l" as it appears in the Interpretation Act.

**Senator Hollett:** I did not want him to get away with that.

**The Chairman:** It may even have been passed by a Conservative Government with those words in it.

**Mr. Scollin:** Perhaps I should refer to the words "hatred or contempt". These are the

words which are used in the Cohen Report. On Page 70, the Cohen Report points out that they left out the word "ridicule" which is used in the traditional formula of criminal defamation; that is, "hatred, contempt or ridicule". They have left this word out from the phrase for fear of inhibiting legitimate satire.

**Senator Hollett:** Now you are into trouble.

**Mr. Scollin:** Their recommendation in that respect has been followed.

**The Chairman:** I have the Oxford Dictionary definition of "ethnic" now.

**Mr. Scollin:** This dictionary says the word is of Greek origin, "heathen," from "ethos" meaning "nation". Then it is given as meaning the non-Israelitish nations, Gentiles. "Ethos" at one point would seem to have been the Gentiles as distinct from the Jews. As an adjective, it means "pertaining to nations not Christ an or Jewish; Gentile, heathen, pagan." In modern usage, ethnicism is the religions of the Gentile nations or the common characteristics.

**The Chairman:** You need an American dictionary.

**Senator Laird:** Where do the Scotch come in?

**Mr. Scollin:** The original ethnic group, I think.

**Senator Hollett:** Leave it for the judge.

**The Chairman:** We will leave it. This is something we could give a little thought to later.

**Mr. Scollin:** The last element is the one which requires that, in order that there be an offence arising from communication or statements in a public place which do incite hatred or contempt against an identifiable group, all that having been established—that is, that the statements have been communicated in a public place, which do incite hatred or contempt, and such hatred or contempt being against an identifiable group—all this being established—nevertheless, there is a remaining essential element which must be proved in order to make up an offence under subsection (1)—it is, that such incitement is likely to lead to a breach of the peace.

On that point, the Cohen Report on page 63 observes that legislation drawn along these lines—talking about subsection (1)—would make it possible for any unreceptive audience

by their negative or violent response to determine whether or not the speaker addressing them would be liable to go to jail. But the Cohen Report believes that such dangers can be minimized by drafting the legislation narrowly in the following respects: its application should be restricted to statements communicated in a "public place"; the statements must be such as to create "hatred or contempt" of an "identifiable group," so that the speaker must be the author of his own misfortune and not merely the victim of a hostile crowd; the "identifiable group" that is protected must be limited in accordance with the definition; and the statements must be of such a character as to be "likely" to lead to a "breach of the peace".

It would, therefore, be possible under subsection (1), if statements of the kind mentioned were made and all the other ingredients were satisfied, that the breach of the peace might very well be caused by the people listening, who, undoubtedly, if they did go to the extent of actually committing a breach of the peace or being disorderly, would themselves be guilty of an offence. But nevertheless, if this were the result or if there were a likelihood of this leading to a breach of the peace, the maker of the statements would be guilty under subsection (1).

Now, it will be noted just in passing that there is a defence provided in subsection (3) to the case where statements are made in which there is a willful promotion of hatred, whether in public or in private. But there is no defence of "truth" to the offence under subsection (1). That statements are true is no defence for the chap who has communicated them in a public place to incite hatred against an identifiable group and where that incitement is likely to lead to a breach of the peace. It is no defence under the legislation for him to say, "Well, the statements were true", or that they were relevant to any subject of public interest, the public discussion of which was for the public benefit and that on reasonable grounds he believed them to be true. That is no defence under subsection (1).

Going on to subsection (2), which is the willful promotion of hatred or contempt against an identifiable group, you will note there that the essential ingredients are simply, firstly, the communication of a statement, secondly, willfully done to promote hatred or contempt and, thirdly, against an identifiable group—again as defined below.

It applies whether the statement is made in a public place or in a private place and it is broad enough in its terms to cover statements by one individual to another individual. Whether in fact that would be likely to be accepted as the legitimate range of the section is perhaps doubtful.

Again this is, as in section 1, an indictable offence with the liability of imprisonment for two years, or an offence punishable on summary conviction. Of course, it is again the option of the Crown whether the charge will be an indictable offence or an offence punishable on summary conviction, and in the case of an indictable offence the accused would have the option of a trial by magistrate or by judge without jury or by a court composed of a judge and jury.

This by the way does follow on the recommendation of the Cohen Report as contained on page 69 and is in exactly the same terms. There it appears as recommendation No. 3 on page 69, and the defence set out in subsection (3) again follows exactly the form of the Cohen Report as set out on page 69. It is based on the words used in connection with defamatory libel.

You will see this form of words used already in the Criminal Code as reproduced in the Cohen Report on page 44. Paragraph (a) provides for the defence of absolute truth.

**Senator Hollett:** Who is to decide whether it is in the public interest or otherwise?

**Mr. Scollin:** Well, this is really the same court as has to determine at present under section 259 in the case of defamatory libel against an individual as distinct from against a group. Section 259 as reproduced on page 44 says:

259. No person shall be deemed to publish a defamatory libel by reason only that he publishes defamatory matter that, on reasonable grounds, he believes is true, and that is relevant to any subject of public interest, the public discussion of which is for the public benefit.

**The Chairman:** In other words, these words will have been judicially defined by the courts already in previous cases?

**Mr. Scollin:** Now, this is a case which is commonly known as "reverse onus". You will see that the provision is that no person shall be convicted of an offence under subsection (2) where he establishes certain things. This is not a case of the Crown having to prove the

negative. The Crown, under subsection (2), would have to prove that the accused communicated statements and that he thereby willfully promoted hatred or contempt and that that hatred or contempt was promoted against an identifiable group. That would be as far as the Crown would have to go in terms of proof. It would then be a matter for the accused to establish either of his defences—not of course by the same high standard of proof required of the Crown, but in the ordinary way by a preponderance of probabilities. The burden of proof beyond a reasonable doubt would always remain on the Crown, but it is for the accused to establish both of these defences.

**Senator Fergusson:** Does not the Crown also have to establish that it is likely to lead to a breach of the peace?

**Mr. Scollin:** That is under the first subsection, and there is no defence of truth or reasonable belief in truth open in that instance.

**The Chairman:** The word "wilfully" in there puts a little higher burden on the Crown because they have to prove an intent on the part of the person.

**Mr. Scollin:** I agree.

**The Chairman:** When they have got that far, he has the defence available to him, but they would have to prove an intent or "knowing wilfulness" is the way it is interpreted.

**Mr. Scollin:** You will see that, in part, in the case of defamatory libel in section 261, reproduced at page 44. There it says:

No person shall be deemed to publish a defamatory libel where he proves that the publication of the defamatory matter in the manner in which it was published was for the public benefit at the time when it was published and that the matter itself was true.

In other words, the burden of proof on the accused in cases of defamatory libel is two-pronged. Here it has been restricted; all the need establish is that the statements communicated were true. There need be no test or proof that it was for the public benefit at the time it was published. Now that is under paragraph (a) of subsection (3).

Perhaps I should just point out and stress the word "or" between (a) and (b). He can take advantage of either of these in his defence—either that they were true or that on reasonable grounds he believed them to be true

and that they were relevant to a matter of public interest, the public discussion of which was in the public interest.

Now subsection (4) of section 267A merely involves a forfeiture proceeding. This is not in an unusual form. This relates to the forfeiture of the material. The actual forfeiture provision contained in subsection (4) is not among the specific recommendations of the Cohen Report.

**E. Russell Hopkins (Law Clerk and Parliamentary Counsel):** It recommended that in general terms, however. Is that not so? It did recommend that legislative action be taken in respect of forfeiture.

**The Chairman:** Yes, in forfeiture under 267 you get a seizure of the actual propaganda itself, which is the means by which the offence is committed which could be a sign, a loud-hailer, a public address system, or could even be a television station for that matter.

**Mr. Scollin:** This is a subsidiary one and follows obviously from the principle of the others.

Now section 267c was again not among the express recommendations of the Criminal Code, but on page 71, and this is relevant to subsection (4) in 267B, they say:

We recommend that study be given to the matter of the seizure of hate materials and of their confiscation after conviction.

This matter of confiscation after conviction is referred to at subsection (4) of 267c which deals basically with the procedure of the trial and the offensive nature of the material without any question of a person being convicted. As I indicated earlier this follows the provisions in 150A which added to the Criminal Code in 1959 to take care of the seizure of obscene material or crime comics. It follows exactly the pattern of that section.

Under subsection (1) there has to be an information on oath showing reasonable grounds to believe that there is a publication within the jurisdiction of the court copies of which are kept for sale or distribution in premises within that jurisdiction and that it is hate propaganda. For the first time the words "hate propaganda" are used and this is defined on the last page of the bill, page 4, at subsection (8), paragraph (c) where it says:

"hate propaganda" means any writing, sign or visible representation that advocates or promotes genocide or the com-

munication of which by any person would constitute an offence under subsection (2) of section 267B;

Now it is restricted to writings, signs and visible representation so that there is that slight narrowing from the word "statements" as defined in 267B, subsection (5), paragraph (c), which relates to spoken or written words, gestures, signs and so on.

So, hate propaganda is defined to cover publications that would either advocate or promote genocide or would constitute an offence, if communicated under section 267B(2).

Section 267c(2) provides for the issuing of a summons to the occupier, so that he can attend, if he wants to, and show cause why the material should not be forfeited.

Subsection 3 gives a right to the owner and author to appear and argue against the making of an order.

Subsection 4 provides that if the court is satisfied at the end of the hearing that the publication is within that prohibited definition, it can confiscate the publications, and the attorney general of the province would be responsible for disposing of them.

Subsection 5 says that if a judge is not so satisfied, then the material is restored as soon as the appeal period has elapsed.

Subsection 6 sets out the appeal from the making of an order or the refusing of an order on a question of law alone, a question of fact alone, or a question of mixed law and fact. And the form of an appeal is as if it were against a conviction in the case of an indictable offence under Part XVIII of the Code to the Court of Appeal for the province.

Subsection 7 is a protection against any further action being taken by way of prosecution, where the court has made an order. This order would be either under subsection 4, that the material be forfeited, or under subsection 5, where the material is not ordered confiscated but ordered returned. The provision is that without the consent of the attorney general of the province no proceedings shall be instituted or continued charging advocating or promoting of genocide under section 267A or either of the offences under section 267B.

**The Chairman:** This is to give some control over multiplicity of actions?

**Mr. Scollin:** Yes, to prevent an abuse of process, or a multiplicity of actions.

**Senator Laird:** But you can proceed with the consent of the attorney general?

**Mr. Scollin:** Yes.

**Senator Laird:** Does not that, in a sense, eliminate the defence of *autrefois convict* and *autrefois acquit*?

**Mr. Scollin:** No one has been convicted. All that has happened is that they have made an order for the forfeiture of publications.

**The Chairman:** I think you have an alternative. You can go under section 267B(2) and then under (4). If you convict there, then you can get an order for confiscation under subsection (4); or, you can go against the thing itself here. I would imagine what it is intended to do is to stop, say, 100 people coming in and wanting to start the action all over again. What might happen is this. I can conceive of a case where you might get a quantity of publications seized and then, at a later date, you find out they have printed more. Then, under those circumstances, the attorney general could, if he felt it proper, permit a second action to go after the second group. This is what I would imagine it is for.

**Senator Laird:** Quite.

**The Chairman:** Now, that completes the review of the bill. Do we have some questions?

**Senator Laird:** Under section 267c(6) was it necessary to spell out the grounds of appeal in that fashion? Are those grounds not available in any appeal—that is, law, fact, mixed law and fact?

**Mr. Scollin:** No. To take just one illustration, the right of appeal of the Crown is limited to a question of law. There could be no appeal on a question of fact.

**The Chairman:** And that would apply to a private prosecutor?

**Mr. Scollin:** The accused would be entitled, with leave from the court of appeal, to appeal on a question of mixed law and fact. This gives an absolute right to appeal.

**Senator Laird:** I wondered why you spelled it out, and that is a good explanation.

**Mr. Scollin:** If you look at sections 583 and 584 of the Criminal Code, they are the sec-

tions which set out the present rights of appeal to the Court of Appeal in an indictable offence, and they are narrower than these. And this pattern was established, again, in 1959 in the case of obscene materials, and we have followed it through.

**Senator Bourque:** At the last meeting I asked a question as to the definition of hate literature: Where does hate literature begin? How can you judge it? To one man it may be hateful, and to another it may be nothing. You are all lawyers at this table and you understand all these facts, but I am only a layman and I would like to know just what hate literature really is.

**Mr. Scollin:** Well, hopefully the bill is as readily understood by a layman, because—

**Senator Bourque:** It is a hard question, I know, but you know what I mean, and I would like to have it made clear in my own mind what constitutes hate literature, because often many things are said that are not meant. A mother could be mad at her boy and say, "I'll kill you!", but she has no intention of killing him. There could be things said even among friends. Someone could say to me, "You damned Frenchman!" He may be my very best friend, and has no intention of meaning that. But would that be taken as constituting a saying that is hateful, or what?

**Mr. Scollin:** Surely, this is really a layman's law, because, as it states:

...by communicating statements in any public place, incites hatred or contempt against any identifiable group where such incitement is likely to lead to a breach of the peace,

One may not be able to define or categorize hate literature, but if you read the material that appears on, for example, pages 266, 268 or 269 of the Cohen Report—any of these things at the back—you might find a great deal of difficulty in making up a legal definition of it; but one hopefully would say a layman would recognize this for what it is, and that these are statements that did in fact incite hatred and did incite hatred against an identifiable group. These are statements that do, in fact, incite hatred, and they do incite hatred against an identifiable group.

**Senator Bourque:** But there are so many elements. It may be language, it may be jealousy, it may be almost anything. It may be in commerce or trade. As a layman, I really could not come to any conclusion as to what

is a definition of "hate literature." That is why I said to myself that the next time I was here I was going to ask the lawyers where those words begin, and where they end.

**Mr. Scollin:** It is very difficult to define "defamatory libel," but the fact is that juries habitually manage to come to a pretty sound conclusion on the particular facts of a particular case as to what actually happened, without having anything in the form of a water-tight definition which would probably sweep more in, in a dangerous way, than it leaves out. For example, section 248(1) deals with defamatory libel, and provides:

A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or that is designed to insult the person of or concerning whom it is published.

Now, that definition in its own way is neither more precise nor more imprecise than the definition that is attempted in section 267B. In the particular case that is a matter of an honest *bona fide* determination as to whether what was published was published without lawful justification or excuse—this would be a matter for the court—and is likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule.

One cannot define the categories of hate, contempt or ridicule, but given a specific case and a specific document, and given the framework within which you are operating, you can apply these general tests, and say either "This falls within the definition", or "This does not fall within the definition".

The motivation, for the purposes of section 267B, does not matter. It may be commercial anxiety, commercial jealousy, or there may be any number of reasons, but what this is aimed at is the eventual result that comes out of what is published. I would hesitate to think that one could define this highly emotional sort of thing. We can categorize it and say that we will add books to our list as they come out, and say that these are and these are not, but this would be a pretty unsatisfactory way of doing it.

**Senator Bourque:** You said that the courts would decide, but that may not be satisfactory because one judge may look upon it as a very grave offence while another judge might say it is nothing at all. Take myself, for instance. When I was a young man there

were many things that I would have said are not right, are unjust, and so forth. But now, with the experience of years, I have come to the conclusion that I should say of some of these things: "Well, that is that man's opinion. He did not mean badly. That was just his way of judging this affair". That is why I ask: Is there not a gauge by which we can measure whether this is hate literature or not?

**Mr. Scollin:** Of course, it has to be aimed at colour, race and ethnic origin. You are limited to things that incite hatred or contempt on these grounds in relation to colour, race or ethnic origin. This is not the whole field of debate. This narrows it down to these three tests. It has to be hatred or contempt on the ground of colour, race or ethnic origin. So, initially you are starting off from not too broad a base.

**The Chairman:** Perhaps it will help, Senator Bourque, if you keep in mind that the test is that of a reasonable man looking at the document. The question of whether there is libel or not is a question of fact, which means it is for the jury, and not for the judge, to decide. Of course, if there is no jury then the judge has to put himself in a position of saying: "I am not judging this from a purely legal point of view. It is my own common sense that tells me what this thing is."

If you look at some of the documents that are reproduced in the Cohen Report I think it is obvious that any reasonable person, reading those documents, would come to no other conclusion but that they did, in fact, hold the groups referred to in them up to hatred and contempt, and that they were intended to do that. Once you get to that point, there is no trouble.

The same difficulty was experienced with respect to obscenity and crime comics. We reached a point in the law where finally we could not define these things with complete preciseness. When that happens the courts then apply, or they ask juries to apply, the test of what the reasonable man would think. The question is: Would a reasonable man, reading this document, looking at this sign, or hearing this broadcast or whatever it was, feel that the intention and the effect of it was to hold this identifiable group up to hatred or contempt? This would be the same as the test that would be applied in the case of an individual.

One of the things that runs through much of this hate literature is: The Negro is inferi-

or. When you make a general statement to the effect that the Negro is inferior then, in the context in which it is made, it is obviously intended to hold up to contempt the whole of the Negro people, and every Negro person. But, if I say, "This man is inferior," then I may have an excuse for so saying.

Another thing that runs through these examples is the statement: Communism is Jewish. This applies particularly in the United States where they have such a fixation on communism, and even in this country I know of an instance where a man was awarded, I think it was, damages of \$3,000 because someone called him a communist. At the particular time and in the particular circumstances it was felt that that was defamatory. This was in a civil libel action.

It so happens that a group at the present time cannot take such civil action, nor is it desirable that they be able to do so. Should damages be awarded to one person in the group, or should everyone in the group be allowed in?

This is why this is put under the criminal law, because the State then steps in. This applies particularly in a country like Canada, where we are trying to build what has been called a multi-national, a multi-racial, or a pluralistic society, or, as someone has called it, a mosaic, and where every man is entitled to be proud of his ancestry and his culture. If we are to succeed in this then, surely, we have to prevent the abuse of people by even well-meaning individuals, because of the actions of a character over which a person had no control in the first place, and in respect of which he could do nothing to change, in the second place. This is what this is intended to cover.

If anybody in Canada holds a group of people up to contempt or hatred, or, in other words, tries to incite people to hate them or to be contemptuous of them, then this law says it shall be a crime, and upon conviction it shall be punished by the State. There are also defences set out in order to protect as far as possible legitimate freedom of speech.

There is certainly some interference with freedom of speech, but there is some interference with freedom of speech in the laws that make obscenity a crime. There is interference with freedom of speech under section 246 of the Criminal Code, for example, where blasphemous libel is made a crime. Do not ask me what blasphemous libel is, because I do not know. I do not think there has ever been a

case on it in Canada, but it is in the Code. These are things which are for our protection, and because it is in the national interest that they be made crimes. These are questions this committee has to determine. If we can get a better definition we will be glad to have it, whether there should be additions or subtractions.

**Senator Bourque:** For many years I represented a group in the House of Commons composed of practically all the ethnic groups you could find anywhere. I was also mayor of a city and knew practically everybody. We all got along fine because we understood what was detrimental to each other and tried not to say anything to offend, but we have not got the same understanding in the wide, wide world. You have been very convincing, Mr. Chairman, but I would remind you that a man convinced

against his will

Is of his own opinion still

I am now nearly 80, so I have a lot of experience. I have travelled all over the world and I do not believe the situation is as easy as you suggest. I have been trying all my life to discover what hate propaganda is. Sometimes things are said which the heart does not mean and afterwards the person saying them is sorry. No harm was meant, but the feelings of his brother man were hurt because hurtful things although they were not really bad were said.

When speaking about coloured people, for instance, it can be assumed that even one little word can cover them all, yet no harm is meant to anybody and it is merely an expression. It is like referring to "damned Frenchmen." When that expression is used it does not mean the person hates Frenchmen. I am reminded of the story of the man who went to his parish priest and said, "Father, I have a sin to confess. I hate the French." To this the priest replied, "Tut, tut! Don't say anything. I hate them myself."

Although people may say detrimental things about others, they would run great risks to try to help those same people if they were in danger; people can hurt the feelings of others by saying something they do not really mean, and the next moment go out of their way to take them to hospital because they were injured. A family of a father, mother and six children cannot live in continual harmony. From time to time one child will say something which hurts the feelings of others. This sort of situation is too broad for

any man to be able to explain. One cannot get to the bottom of it.

**The Chairman:** At some point in our law we have to depend on the good sense of our courts. This is the basis of all justice.

**Senator Bourque:** That is right.

**The Chairman:** Over the years our courts have shown ability in drawing distinctions between the situation to which you refer, where a person says something in the heat of a quarrel without thought or contemplation, and the situation in which somebody deliberately spreads a vicious rumour about someone else, deliberately and cold-bloodedly designed to hurt that person. For example, in some of the literature reproduced in the Cohen Report the people putting it out talk about the "lies of Dachau" and allege that what we have heard about the concentration camps were stories "cooked up" by Hollywood with the aid of plastic bodies to obtain photographs. It is alleged that nothing of what we have heard about the concentration camps ever happened, that it is all part of a Jewish conspiracy to undermine public opinion.

**Senator Lang:** Surely this is so childish that nobody can believe it.

**The Chairman:** It has been alleged and some people do believe it.

**Senator Lang:** The documents reproduced in the back of the Cohen Report do not incite me to hatred or contempt of the Jewish people. They incite me more to hatred and contempt of the publishers. I just cannot believe this could be a matter of real concern, and I think this is what bothers us, as to what is behind this bill.

**Senator Bourque:** That is right.

**The Chairman:** I know there is a great deal of controversy about this bill. This morning we have had Mr. Scollin here to explain the bill to us. He has been asked as the representative of the Department of Justice to prepare the legislation as a matter of Government policy. He has done that and has been asked to come here and explain it to us, which he has done. We will now have Professor Cohen here, who will explain a number of the things that went into his report and what lies behind it. He may quarrel with some of the items proposed in this legislation. We will also have people from the Canadian Citizenship Council. We have a letter from the Canadian Bar

Association approving the bill in principle. When I asked Mr. Merriam, the secretary, whether they wanted to submit a brief he said he did not think so but he would let me know. I have been advised that there are one or two individual lawyers who want to appear. The World Jewish Congress will be sending representatives next Thursday, following Professor Cohen. I have given press releases and appeared on television asking people across the country to write to us if they want to come and make representations on the bill.

I would make this suggestion to all of you. While I may have spoken in defence of the legislation, I was in fact speaking in defence of what I believe to be a principle, not necessarily this legislation. I would suggest that what we must do in all fairness is to hear all these people who wish to come before us, and when we have heard them all we can have a useful discussion in which we can get right down to the business of deciding whether we like the bill at all, whether we like parts of the bill or whether we would like it better if some changes were made.

I do not think we should be making these decisions when all we have is a bare explanation of the bill. When we read the section of the report prepared by the sociologists on the effect of hate literature, the type of people affected by it, the type of people who write it, the effect on groups subjected to the abuse and the general effects on society, we may have an understanding of the problem which we do not at the moment possess.

**Senator Lang:** I would say with respect, Mr. Chairman, that you will occupy the chair throughout these hearings and we will occupy the role of committee members. I think we all understand your point of view, but I am sure we shall get along a lot more easily if we do not experience antagonism from the chair.

**The Chairman:** I apologize. You are quite right, Senator Lang.

**Senator Lang:** I should like to suggest some specific considerations to Mr. Scollin and put some general questions on the law, which is certainly not familiar to my practice. Referring to section 267c, is it not possible to confiscate so-called hate propaganda under the section in the present Criminal Code dealing with obscene literature?

**Mr. Scollin:** I think the word "obscene" has now been sufficiently closely related to sex

and morals to make it rather difficult to attempt to confiscate some of the material which is reproduced in the Cohen Report. Section 150 of the Criminal Code deals with obscene matter and crime comic. Subsection (8) says:

For the purposes of this act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

**Senator Lang:** That is the "shall include" section, is it not?

**Mr. Scollin:** That is true, and there is still I suppose some lingering doubt whether the Supreme Court has treated this as the beginning and end of obscenity of whether in fact it is still open, under the *Brodie* case, to argue that this definition is not exhaustive. If a lawyer can express a layman's view, I would think that the word "obscenity" is so closely tied in with sex and morality, general sexual morality, or immorality, that it would not be regarded now as covering such material as this.

**Senator Fergusson:** Would not some of these things be considered so?

**Mr. Scollin:** "Obscenity" is the exploitation of sex or sex plus, and there is either sex alone, or sex plus cruelty or violence.

**Senator Lang:** You do not get very many convictions under that section now. The more obvious meaning of "obscenity" today—

**Senator Bourque:** I would not wish anyone to think that I was trying to embarrass Mr. Scollin, but I am sure he is too intelligent to think that I would try to embarrass him. He said he is here to explain the law, to give to a layman what is the law. This is my question—where you put forth a question, it still remains—there is nothing defined as to just what is "hate literature". That is very fundamental to me. I have to know what I am going to do, how I am going to judge things, how I am going to take them into consideration. To me this is the most important point in the whole affair.

**Senator Laird:** Mr. Chairman, could I speak to that point?

**The Chairman:** Please do.

**Senator Laird:** For example, let us take this situation. My ethnic origin happened to be Scotch.

**Senator Lang:** Shame!

**Senator Laird:** The Scotch race has been the subject matter of a good many jibes. Just supposing there is enough said by any individual or by more than one individual about the stinginess of the Scotch race, to stir up a breach of the peace. Is that sort of thing intended to be covered by this bill? What do you say, Mr. Scollin? You are obviously sympathetic.

**Mr. Scollin:** A chap would have the defence of truth, under subsection(3).

**Senator Fergusson:** That is a very good answer.

**Senator Laird:** Assuming it were not true and that you could not establish the truth of it, is it a defence, in your opinion?

**Senator Lang:** You might say that of incitement of Scotch to controlling all financial situations in Canada.

**Senator Laird:** You could not plead truth to that.

**Senator Fergusson:** Unfortunately.

**Senator Bourque:** You could say you wish it were true.

**Mr. Scollin:** I do not think that this is the type of thing which is covered by a term such as "incitement" or hatred or contempt," nor would I think that the Scotch really fall within "colour, race or ethnic origin." I do not think this is the type of thing the bill is directed to—Scotchmen, Englishmen, Irishmen.

**Senator Lang:** On a question of privilege, Mr. Chairman, I claim the same ancestry. We have the ethos.

**The Chairman:** I would think that it covers any group at all, even though it may not be the group being present or being threatened, any group at all—whenever the court is satisfied that whatever is being said or written or printed or whatever is done, was intended or has the effect of either causing people to hate people or be contemptuous towards them, then an offence is committed.

**Senator Lang:** If I may come back to the actual clause, I would like to hear Mr. Scol-

lin's observations with regard to the shifting of the onus, as mentioned in section 267B(3). I have in front of me the sections of the Criminal Code on defamatory libel and I notice that the onus is on the Crown to prove that a statement is made knowing it to be false. I was wondering why, under these circumstances, it would be felt necessary to shift the onus on to the accused to make his defence under that section.

**Mr. Scollin:** Could I refer, first of all, to page 66 of the Cohen Report and tell you what their observations were. In the subparagraph on that page, they observed, in particular:

For there can be little truth in abuse as such. We are strengthened in this opinion by the example of the Post Office Boards of Review (and they are referring to the National States Rights Party) which entertained the defence of truth raised at their hearings and had no difficulty in finding that the claim to truth was entirely spurious. Indeed the first Board wrote of the statements there in question that "their abusive quality is heightened by the knowledge that they are, in the face of obvious facts and repeated demonstrations of their falsity, represented as the 'truth'." or these reasons also and so as not to severely encumber the prosecution with the necessity of adducing evidence against palpable falsehoods, we have decided to recommend that the burden of proving the truth of abusive statements should be placed upon the persons charged rather than resting upon the prosecution to disprove. For the accused was first an accuser and his accusations must be for him to prove.

To take, for example, the case of Dachau, the net result in practice would be, if the allegation made is that Dachau never happened, that this is a Jewish conspiracy to misrepresent the truth of history, of twenty-five years ago, and if part of the Crown's case then, part of the case of the Crown prosecutor in, say, Hamilton or Winnipeg or Vancouver, would be to prove, to have to prove, to undertake the burden of proving that what happened in Dachau did in fact happen—would this mean calling the survivors of Dachau, calling German guards, doing, redoing, the Nuremberg trials? This in fact is a practical matter. Look what it would mean if the burden of proof in this case were not put upon the accuser in the same way as an accusation against an individual, in a case under

section 261, where the accused has got to prove that the publication of the matter and the manner in which it was published was for the public benefit at the time it was published, and that the matter itself was true—where, on the face of the material, there is apparent abuse and excess. For the type of reason given in the Cohen Report, the object of the legislation is to say that, where you make allegations of this nature, it will be up to you to prove—rather than for the Crown to disprove, to undertake this enormous burden of, as I say, in this particular example, again redoing and reproving before a Canadian jury the findings of Nuremberg.

**Senator Laird:** The Crown has a lot more resources than the private individual to do things like that.

**Mr. Scollin:** Taking again this particular example, which is perhaps as useful as any, the individual, before alleging the untruth, the non existence of the facts of Dachau, has a mass of written material from reputable sources which if he has got goodwill, he can analyze, look at, to decide before he controverts what has apparently been established again and again. He has the mass of material available on which to make up his mind before making public statements.

There has to be largely a practical approach to this, that, if the legislation is going to function at all in the case of serious and, on the face of it, patent abuse, patent controverting of truth, it must be placed on the person who is the accuser rather than require the Crown to disprove it by witnesses. There are no shortcuts. The Crown cannot prove it by documents or by a transcript of the Nuremberg trials. It must be proved by trial. There must be witnesses. This is the reason for the reversal of onus.

**Senator Lang:** In crimes, generally, the Crown has a severe onus. This becomes a crime, if this bill becomes law. I really cannot see why this sort of crime should be any different from any other crime, if it is warranted being called a crime at all. The onus on the Crown is present in all capital charges right through to the least charge. Why should this case, which I would consider somewhat lesser than murder or rape or anything of that nature, carry with it a heavier burden on the accused than is normal in other crimes.

I am getting at this point: your example of Nuremberg is, I think, rather extreme. I can conceive of other statements where the ele-

ment of obvious truth or falsehood is not so clearly present. I would think that in those cases the Crown should assume the normal burden of proof; otherwise, this perhaps should not be included in the Criminal Code.

**Mr. Scollin:** There you might have paragraph (b), which is open to say, "Well, I had reasonable grounds to believe these were true statements, and they are relevant to a subject of public interest". He need not prove the absolute truth in all situations.

**Senator Lang:** I do not think that really answers my point, which is that I think under section (b), that section should carry with it the onus on the Crown to prove that the person making the statement did not do so in the public benefit and did not have reasonable grounds to believe them to be true, or made them knowing them to be false, in the same way that the burden is carried under the defamatory libel section.

**Mr. Scollin:** If I might just take another specific example, look at page 263 of the Cohen Report. The headline in *The Thunderbolt* says: "Communist Party Meets in Jew Centres".

Now, has the Crown to undertake the obligation of proving that that is not so, assuming that this type of material is within this framework? Has the Crown to undertake the burden of proving that nowhere, at no time, at no place, did the Communist party meet in Jew centres?

Or, looking at page 265, assuming for the moment that this is in here: "Communism is Jewish". Is this to be disproved by the Crown? Or, as in the second paragraph, "Over 1,000 British officers and men blown to pieces, knifed or hanged by Jewish terrorists in Palestine". Does the Crown have to prove that this is not so? Does it have to call people from the Palestinian campaign to show that this was not true?

One can go through these particular examples here and just by testing the type of material that appears on the face of them, one can see that the legislation would be completely emasculated, if as a practical matter the Crown had to, as part of its case, set out to disprove these allegations.

**Senator Lang:** These statements are so self evidently false that I do not think they need proof or disproof.

**Mr. Scollin:** But is it so self evidently false? If one leaves the ordinary burden with the Crown of proving each and every element of the offence, does the accused stand up at the end of the Crown's case and say, "But I have no case to answer. I am entitled to an acquittal because the Crown has failed to disprove or has failed to negative my allegations." It is for this reason that, as a practical matter, if the legislation is to work at all, this should go in.

**Senator Laird:** Mr. Scollin, I think we are all undoubtedly agreed that we want to do the right thing. This sort of thing is just plain vicious and sadistic. We want to stop that, but in the process we want to make sure that we do not hook into the net people who are innocent. This is something that worries Senator Bourque, myself and others.

**Mr. Scollin:** Quite so. This is a concern which was in mind when the legislation was drafted, and I am sure you will appreciate that, as the committee has mentioned, the difficulty is drafting legislation which does not sweep into its net that which is not intended.

**Senator Laird:** By the way, Mr. Chairman, are we going to have the benefit of having Mr. Scollin back again, in view of the fact that it is time, speaking personally, to go?

**The Chairman:** It is my intention that Mr. Scollin will be called back later on, after we have heard some witnesses and have got to the point where there might be suggestions as to changes in the legislation.

**Senator Laird:** Speaking only for myself, I would like to take a closer look at this in the light of the conversations that have taken place today. I might have other questions. I wonder if he will be available.

**Mr. Chairman:** He can be available pretty well at any time.

**Senator Lang:** Particularly, I would like to have his views on the adequacy of the particular parts of the present code to deal with this problem. I would like to know where they are and what are their shortcomings, and so on.

**Mr. Scollin:** This is something I had hoped to get at this morning. May I say that these are reviewed in the Cohen Report at pages 36 to 51, and I consider that review of the law accurate. Those pages contain an extensive

review of the present law, both on the question of group intimidation and on the question of group defamation.

**The Chairman:** If it is your wish, perhaps Mr. Scollin could be available at 1.30 next Wednesday. Is that agreeable?

**Senator Lang:** I think it would be, Mr. Chairman. It would give us a chance to look over these things with him.

**The Chairman:** If that is agreeable, we can make that a firm commitment now.

**Mr. Scollin:** That is satisfactory.

**The Chairman:** All right, 1.30 a week from today, Wednesday, February 21.

I gather it is the wish of the committee to adjourn, and I would entertain such a motion.

**Senator Fergusson:** Before adjourning, I think we should thank Mr. Scollin for his very clear explanation.

**The Chairman:** We certainly should. Thank you, Mr. Scollin.

The committee adjourned.

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Second Session—Twenty-seventh Parliament  
1967-68

# THE SENATE OF CANADA

## PROCEEDINGS OF THE SPECIAL COMMITTEE ON THE

# CRIMINAL CODE

(Hate Propaganda)

The Honourable J. HARPER PROWSE, *Chairman*

No. 2

### *Second Proceedings on Bill S-5*

intituled:

“An Act to amend the Criminal Code”.

THURSDAY, FEBRUARY 29th, 1968

### WITNESSES:

1. *The Canadian Jewish Congress*: Michael Garber, Q.C., National President; Louis Herman, Q.C., National Chairman and Chairman, joint committee on community relations, B'nai B'rith; Sydney M. Harris, Vice-Chairman, Central Region; John A. Geller, Chairman, committee on Bill S-5; Saul Hayes, Q.C., Executive Vice-President; F. M. Catzman, Q.C., Chairman, legal committee, Central Region; B. G. Kayfetz, National Executive Director, joint community relations, and national executive director, joint community relations committee, B'nai B'rith; Mrs. Minerva Rosenthal, National President, National Council of Jewish Women; Jacob Egit, Executive Director, United Organizations for Histadrut.
2. Professor Maxwell Cohen, Dean, Faculty of Law, McGill University.

ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1968

THE SPECIAL COMMITTEE ON THE CRIMINAL CODE  
(Hate Propaganda)

The Honourable J. Harper Prowse, *Chairman*

The Honourable Senators:

Boucher	Laird
Bourque	Lang
Carter	Lefrançois
Choquette	O'Leary ( <i>Carleton</i> )
Croll	Prowse
Fergusson	Roebuck
Gouin	Thorvaldson
Hollett	Walker
Inman	White—(18).

(Quorum 5)

## ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 2nd, 1967:

"The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Bourget, P.C.:

That a Special Committee of the Senate be appointed to study and report upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5, intituled: "An Act to amend the Criminal Code"; and

That the Committee have power to call for persons, papers and records, to examine witnesses, to report from time to time, and to print such papers and evidence from day to day as may be ordered by the Committee, and to sit during sittings and adjournments of the Senate.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative, on division.

*With leave,*

*The Senate reverted to Notices of Motions.*

"The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Bourget, P.C.:

That the Special Committee of the Senate appointed to study and report upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5, intituled: "An Act to amend the Criminal Code", be composed of the Honourable Senators Boucher, Bourque, Carter, Choquette, Croll, Fergusson, Gouin, Hollett, Inman, Laird, Lang, Lefrançois, Méthot, O'Leary (*Carleton*), Prowse, Roebuck, Thorvaldson and Walker.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative, on division."

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 21st, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Deschatelets, P.C., for second reading of the Bill S-5, intituled: "An Act to amend the Criminal Code".

After debate,

In amendment, the Honourable Senator Flynn, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be not now read the second time but that the subject-matter thereof be referred to the Special Committee of the Senate appointed to study and report

upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5, intituled: "An Act to amend the Criminal Code".

After debate, and—

The question being put on the motion, in amendment, it was—  
Resolved in the negative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Special Committee of the Senate on Hate Propaganda.

The question being put on the motion, it was—  
Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Wednesday, December 6th, 1967:

"With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Macdonald (*Cape Breton*):

That the name of the Honourable Senator White be substituted for that of the Honourable Senator Méthot on the list of Senators serving on the Special Committee on the Criminal Code (Hate Propaganda).

The question being put on the motion, it was—  
Resolved in the affirmative."

J. F. MacNEILL,  
*Clerk of the Senate.*

## MINUTES OF PROCEEDINGS

THURSDAY, February 29th, 1968.

(2)

Pursuant to adjournment and notice the Special Committee on the Criminal Code (Hate Propaganda) met this day at 9.30 a.m.

*Present:* The Honourable Senators Prowse (*Chairman*), Bourque, Carter, Choquette, Inman, Laird, Lang, Lefrancois, Roebuck and Thorvaldson.—(10)

*In attendance:*

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Bill S-5, "An Act to amend the Criminal Code", was further considered.

### WITNESSES:

1. *The Canadian Jewish Congress:*

Michael Garber, Q.C., National President.

Louis Herman, Q.C., National Chairman and chairman of B'nai B'rith joint committee on community relations.

Sydney M. Harris, Q.C., Vice-Chairman, Central Region.

John A. Geller, Chairman, Committee on Bill S-5.

Saul Hayes, Q.C., Executive Vice-President.

F. M. Catzman, Q.C., Chairman, Legal Committee, Central Region.

B. G. Kayfetz, National Executive Director, joint community relations and national executive director of joint community relations committee, B'nai B'rith.

Mrs. Minerva Rosenthal, National President, National Council of Jewish Women.

Jacob Egit, Executive Director, United Organizations for Histadrut.

2. Professor Maxwell Cohen, Dean, Faculty of Law, McGill University.

At 1 p.m. the Committee adjourned until later this day

Pursuant to notice the Committee *resumed* at 2.30 p.m. this day.

(3)

*Present:* The Honourable Senators Prowse (*Chairman*), Bourque, Carter, Choquette, Inman, Lang, Lefrancois, Roebuck and Thorvaldson. (9)

*In attendance:*

E. Russell Hopkins, Law Clerk and Parliamentary Counsel.

Professor Cohen was again the witness.

At 3.30 p.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,  
*Clerk of the Committee.*



# THE SENATE

## SPECIAL COMMITTEE ON CRIMINAL CODE (HATE PROPAGANDA)

### EVIDENCE

Ottawa, Thursday, February 29, 1968

The Special Committee of the Senate, to which was referred Bill S-5, to amend the Criminal Code, met this day at 10 a.m. to give further consideration to the bill.

Senator J. Harper Prowse (*Chairman*) in the Chair.

**The Chairman:** Honourable senators, I see a quorum. We will call the meeting to order. The first witness is Mr. Michael Garber, Q.C., National President of the Canadian Jewish Congress. He will introduce the delegation that he leads this morning. If you will, Mr. Garber, you may go ahead.

**Mr. Michael Garber, Q.C., National President, Canadian Jewish Congress:** Mr. Chairman, and honourable senators, thank you for the opportunity given to the Canadian Jewish Congress to make representation in respect of the pending Bill S-5. You should not be under any misapprehension that we have come here to oppose the bill. On the contrary, I think it is pretty well known that we are not at all disinterested in this bill. We have over the centuries been the principal victim throughout the world of race hatred, and we have not altogether escaped it on this continent—in the United States and to some extent also in Canada.

Although there is at certain times a sort of lull in that type of attack, you can rest assured that under different conditions it will arise again, and we believe that it is essential to have some mere, elementary safeguards to prevent excesses of that sort of thing.

Now, we have a representative delegation of the Canadian Jewish Congress. The congress, of course, is a fully democratic representative body of the Jewish community of Canada. We have triennial conventions at which nearly every Jewish organization is

represented, and our executive is a very large executive which speaks in the name of the whole of Canadian Jewry.

Speaking myself as President of the Canadian Jewish Congress, I would introduce the delegates present. We have here Mr. Louis Herman, Q.C., National Chairman, Joint Committee, of the Canadian Jewish Congress and B'nai B'rith on Community Relations. Mr. Fred Catzman, who is Chairman of the Legal Committee of the Central Division of the Canadian Jewish Congress that comprises the Province of Ontario. Saul Hayes, Q.C. is the Executive Vice-President of the Canadian Jewish Congress. Mr. John A. Geller of Toronto is Chairman of the special committee dealing with this pending Bill S-5. Mr. Sydney M. Harris, Q.C., has given up a number of his years recently in this whole field of community relations. Also present are Mr. Jacob Egit of Toronto and Mr. Ben Kayfetz of Toronto. I am expecting a lady, Mrs. Minerva Rosenthal of Toronto, who is President of the National Council of Jewish Women. I understand she is on her way here.

Now, with your permission, Mr. Chairman, I will ask the Chairman of the Committee, Mr. Louis Herman, Q.C., to lead off in this discussion.

**Mr. Louis Herman, Q.C., National Chairman of Joint Community Relations Committee of the Canadian Jewish Congress and B'nai B'rith:** Honourable senators, I propose to open discussion to deal with the problem and the immediacy of the problem. By that I mean I propose to deal with just what this problem of hate propaganda is and present some samples to you. As far as the immediacy of the problem is concerned, I propose to show that it is a problem that exists today and is just as important and possibly more important today than it ever was.

In dealing with the problem, may I say something about the word "propaganda". As

you know, the report of the special committee was named "Report of the Special Committee on Hate Propaganda in Canada". Sometimes we find this referred to as hate literature but in the true sense of literature it is not literature, it is something that should be thrown out.

**Senator Roebuck:** It is just garbage.

**Mr. Herman:** Yes, as the honourable gentleman says, it is just garbage. But hate propaganda is probably the better definition. I went to the dictionary to see what was the definition of hate propaganda and I find in the *Encyclopedia Britannica* the definition that propaganda is the making of deliberately one-sided statements to a mass audience. It is an act of advocacy in mass communications. Then you also find this definition in the *Oxford Dictionary*, "Propaganda", it says, "association, organized scheme, for propagation of a doctrine or practice;" that is a scheme to persuade somebody to believe in a certain way. It is one-sided and it is deliberately slanted.

The most outstanding example we have of hate propaganda was the technique of Adolf Hitler which was called the big lie technique. He said "A crowd will believe anything if it is repeated constantly." In this he was aided by Streicher and Goebbels. It was simply a case of "If you repeat this often enough, people will believe it." William L. Shirer, in his book *The Rise and Fall of the Third Reich*, deals with this and he discusses how many decent-minded people were gradually persuaded that some of this material was true. I am quoting now from *The Rise and Fall of the Third Reich*, at page 247, where he says this:

I myself was to experience how easily one is taken in by a lying and censored press and radio in a totalitarian state. It was surprising and sometimes consternating to find that notwithstanding the opportunities I had to learn the facts and despite one's inherent distrust of what one learned from Nazi sources, a steady diet over the years of falsifications and distortions made a certain impression on one's mind and often misled it. No one who has not lived for years in a totalitarian land can possibly conceive how difficult it is to escape the dread consequences of a regime's calculated and incessant propaganda. Often in a German home or office or sometimes in a casual conversation with a stranger in a restaur-

rant, a beer hall, a cafe, I would meet with the most outlandish assertions from seemingly educated and intelligent persons. It was obvious that they were parroting some piece of nonsense they had heard on the radio or read in the newspapers. Sometimes one was tempted to say as much, but on such occasions one was met with such a stare of incredulity, such a shock of silence, as if one had blasphemed the Almighty, that one realized how useless it was even to try to make contact with a mind which had become warped and for whom the facts of life had become what Hitler and Goebbels, with their cynical disregard for truth, said they were.

And so we find that with constant repetition the most outrageous lie finally gets to be believed by somebody.

Many leading authorities feel that the most vicious example of hate propaganda was that to be found in the May 1934 issue of *Der Sturmer* which honourable senators will find on page 270 of the Report of the Special Committee on Hate Propaganda in Canada. If I may translate it roughly in my own words, the headline reads: "Jewish plan for murder against non-Jewish humanity disclosed". What was this plan? In the illustration we see gentlemen with hooked noses and yarmulkas or skullcaps draining blood from fair-haired children. The idea it intended to convey was that we murder Christian children to use their blood to make unleavened bread or matzos despite the fact that no Orthodox Jew will eat anything with blood in it. It is contrary to the belief of Orthodox Jews. But the fact that there was neither rhyme nor reason for this made no difference.

Now, honourable senators, you might say that it was only in Germany that anybody would hope to get away with this sort of garbage as the honourable gentleman called it. But it has happened in many countries. In Russia there was the Mendel Beiliss case. This is discussed in Maurice Samuel's book *Blood Accusation*. In 1911 in Kiev in Russia Mendel Beiliss was accused of murdering a Christian child for the purpose of getting the blood. It was a complete fabrication and he was eventually released. But in the meantime he served two years in prison before his release and acquittal on the outrageous lie that no responsible person could believe.

Then, honourable senators, you might say that this was Germany and Russia and that

they are hardly examples of what could happen here. You might say that Czarist Russia and Nazi Germany are hardly examples and that the same thing could not happen here. But let us take the case of the enlightened City of Budapest and the Tisza-Eszlar case. Here again we had a case where a Jew was put on trial and accused of murdering a Christian child for the purpose of getting the blood. Now you might say that this was Hungary—that that was the far east. But let us stop to think what was the reaction in England. Here I would like to quote from page 239 of *The Oxford and Cambridge Review* which was the mouthpiece of the High Church of England. Listen to what they said

"...it is absolutely certain that Orthodox Judaism—nay, Judaism as a whole—stands free from even the slightest suspicion of blood-guiltiness; but to say that is not to say that no Jewish sect exists which practices ritual murder...We do not know where the truth lies, and we are sure that widely-signed popular protests are not a good way of eliciting the truth."

It is of course impossible to disprove the existence of a Jewish sect that practices ritual murder; it is also impossible to disprove that ritual murder has never been practiced secretly by the Kiwanians or the Daughters of the American Revolution.

Honourable senators, that is England and this is the mouthpiece of the High Church of England and a responsible publication, *The Oxford and Cambridge Review*. And to them this outrageous lie could be true. As they said, it cannot be true about the Jews, "but how do we know that there isn't some sect that is doing this."

Then, you might say that that could not happen on this continent. Well, let us take another case, the case in 1914 of Leo Frank in Atlanta, Georgia. This is written up in Harry Golden's book, *A Little Girl is Dead*. In this case a little girl was killed, and Leo Frank was accused of her murder. He spent some time in jail. There was a trial and he was convicted. That was in 1914, but the situation was not much different from the situation we have today in places like Alabama and Mississippi. Leo Frank was convicted and the governor pardoned him and the night of his pardon a mob went to the jail, took him out and forcibly lynched him. Now you may say to me that that was the southern United States.

**Senator Choquette:** Had there been a murder, even if he were not responsible for it?

**Mr. Herman:** Yes, there was a murder, but he was not responsible for it. Later another man was accused of the murder. But the fact that the other people I have mentioned were placed on trial and that Leo Frank was lynched came about as a result of this propaganda which we are told no reasonable person would believe. I mention that for the reason that it was said in the Senate that no one would believe this because it is so outrageous as to be beyond belief. But people have believed it. Now you might say that nobody would believe this in Canada and that nobody would try to publish stuff like this in Canada. But this has been done. I have here a photo copy of a pamphlet distributed at the University of Toronto in 1965. I will read it to you. It has a very crude drawing on top. I will leave these drawings with you.

**The Chairman:** With the consent of the committee perhaps this could be made an exhibit.

**Mr. Herman:** I have quite a few exhibits which I will leave with you.

The pamphlet reads:

This is a kike (Jew).

He always smells from wine herring and pickles. He is ready to entice and rape our Christian girls and use them in his ancient, secret ritual murder ceremonies...a fate worse than hell. The old orthodox kikes teach the younger ones just how it is done. There is no kike, once he is secretly shown "The Method" who is not gleefully waiting to work on our helpless wives, sisters and daughters. They wait in packs, hiding in alleys, to get their clutches on an unsuspecting passerby. Join the crusade of the swastika to eradicate this fearful menace to our society once and for all.

This timely message is made free to the public by the Nazi Party of Canada, Toronto Headquarters.

So, here you have in Toronto in 1965—and I have an example in 1967 that I will show you later—where at University College they distributed these pamphlets, in the hope that some person would have a mind so perverted or simple as to believe there is something in this. It is an historical defamation.

**An hon. Senator:** Did they ever discover who was responsible?

**Mr. Herman:** These secret ritual murders go back hundreds of years.

**The Chairman:** No, who was responsible for this pamphlet?

**Mr. Herman:** This is the Nazi Party of Canada. I do not know whether they were headed by David Stanley then or by John Beattie. It is the same party headed today by Beattie, and I think it was headed then by David Stanley. If this allegation of secret ritual murder was the most vicious propaganda, the most widespread that has come out is the *Protocols of the Learned Elders of Zion*.

**The Chairman:** We will make the first pamphlet Exhibit 1.

(*Protocols of the Learned Elders of Zion*, filed as Exhibit 1.)

**Mr. Herman:** Honourable Senators will find a reference to the *Protocols of the Learned Elders of Zion* in the *Encyclopaedia Britannica*, the 1963 edition, page 85, and I am quoting from that article. The *Protocols of the Learned Elders of Zion* was a story, or purported to be true, of a group of Jews and Freemasons—note that—who met in the 1870s to plan world conspiracy by which they would take over control of the world. At that time it was fashionable to accuse Masons as well as Jews, and the first copy, in the British Museum, shows the conspiracy between the Jews and Freemasons. I happen to be both, so I am really in this up to my ears.

Quoting from the *Encyclopaedia Britannica*:

These plans were said to have been worked out whereby Jews, together with Freemasons, were to disrupt the entire Christian civilization, and on the ruins of Christendom erect a world state ruled over by Jews and Freemasons.

That is the most widespread hate propaganda the world has ever known.

With regard to *Protocols of the Learned Elders of Zion*, the article in *Britannica* points out there has been a great deal of research and investigation, and inquests into this matter. They found it was a paraphrasing and based on a book published in 1864 in France by Maurice Joly called, *Dialogues in Hell Between Machiavelli and Montesquieu*, and they inserted Jewish and Freemasonic characters. They pointed out it was an abso-

lute forgery and fraud and that it had no claim to authenticity. This is a most ridiculous and vicious example.

Here is a copy of *Protocols of the Learned Elders of Zion*, published by Canadian Publications, Gooderham, Ontario, Canada. It is for sale today by Canadian Publications in Gooderham—that is John Ross Taylor's organization—and you can send 95 cents and get a copy today. Pamphlets were distributed last week in London, Ontario, advertising where you could get this. This is the one here in Canada. It says:

Translated from the Russian of Nilus by Victor E. Marsden, late Russian Correspondent of "The Morning Post".

The original came out supposedly in Russia because they thought that in the more enlightened countries they would not be able to publish it.

**Senator Roebuck:** Can you give us a word as to what it says or does?

**Mr. Herman:** The best manner in which you will know what it does or says is to remember the book from which it came, which was, *Dialogues in Hell*. It was a group of conspirators who met around a table to plan the manner in which they would gradually take over control of all Christendom and control the world for their own interests, and by doing that they would have all the spoils coming out of it. You will not see anything about Masons in *Protocols of the Learned Elders of Zion* because that is not fashionable any more. This is all a Jewish plot. If any of you have read Gustavus Myers' *History of Bigotry in the United States*, he stresses the manner in which it was very viciously anti-Masonic when it started, and then in the 1890s it became entirely anti-Jewish.

Perhaps that could be made Exhibit 2.

(*History of Bigotry in the United States*, filed as Exhibit 2.)

**Mr. Herman:** I now show you another document, headed:

*The Key to the Mystery*. The Jewish question as exposed and explained by the Jews themselves.

Again, it is published by Canadian Publications of Gooderham, Ontario, Canada, but it is compiled by the Feminine Anti-Communist League of Montreal, under the direction of Adrien Arcand. It is for sale today, and I will

show you where you can buy it, and it is being distributed at the present time. As I say, it is headed, "The Jewish Question as exposed and explained by the Jews Themselves," and by using a forgery they say the Jews have convicted themselves out of their own mouths. I do not propose to read it to you, but I would like to read to you some of the headlines of the articles in the interior of this piece of garbage. On page 2:

#### A Jewish Plan of World Domination

That is the plan in *Protocols of the Learned Elders of Zion*.

On page 9:

#### The Great Conspiracy.

Secret Jewish Plot Unveiled by the "Catholic Gazette" of England

One thing is significant by races, they change with the tide. With Leo Frank in Atlanta was anti-Jewish; in the sixties it became anti-Negro; in the late nineteenth century, anti-Catholic. However, they try to appeal here to people who are anti-Catholic, and they say it is a tie-up between the Jews and Roman Catholics, that this is a plot between Jews and Catholics.

At page 12 the headline reads:

A Race of Vultures... Which Persecutes all Others

Thus has the Jew Samuel Roth defined the Jewish Race in his book *Jews Must Live*.

Page 15—here again showing the way they change:

The League of Nations, a Judaeo-Masonic Invention

So, in hoping some people who might be anti-Masonic might pick on this, they tie up the *Protocols of the Learned Elders of Zion* with Masons and Jews to the League of Nations, which was supposedly an invention on the part of Jews and Masons to take over the nations of the world.

Page 16 is interesting:

The Cruel Pogroms of History

Their Authors and Victims

They tell the story of the pogroms in Russia and the situation supposedly created by the Jews in order to create sympathy for themselves. It is a reverse twist.

On page 16 it also says:

#### The Dreadful Jewish Secret of Blood

...and they have the ritual murder, just as has been distributed at University College which I have mentioned earlier and is obtainable today.

Again, because they hope to get at some people who distrust freemasonry, they say at page 22:

FREEMASONRY, a dangerous instrument of Judaization.

And just by way of showing you how ridiculous they can be let me read you this one paragraph:

The avowed goal of Freemasonry is "the reconstruction of the Temple of Solomon", which is more than a symbol, but a very fact which will materialize when Arabs are despoiled of Palestine. Jews dream of restoring their religion as the only one in this world if, as Disraeli said, "they destroy Christendom". And if they succeed, they will have done it with the help of Christians blinded by the Judaic masonry, the Judaic League of Nations, etc.

May I put this in as an exhibit?

**The Chairman:** It will be Exhibit 3.

(*The Key to the Mystery*, filed as Exhibit 3.)

**Mr. Herman:** May I then refer to the report of Mr. Justice Wells, as he then was—he is now Chief Justice of the High Court of Ontario—who chaired a board of review on an Interim Prohibitory Order barring certain of these types of publication from the mails issued by the Postmaster General. This report is at Appendix "F" to the Minutes of Proceedings and Evidence of the Standing Committee on External Affairs of the House of Commons, of Friday, March 12, 1965. I refer to page 1859 of these Minutes, and to the portion of his report where Mr. Justice Wells gives extracts from some of the publications that were filed, and that were sent into the country through the mails at that time, and publications which I shall show are being distributed in Canada today.

He is dealing here with *The Thunderbolt*, and in respect to Issue 53 of August 1963 says this:

The issue deals with integration and race-mixing—use of pictures of white girls with negro men is particularly effective. It had a question and answer article

stating it was not Unchristian to be a segregationist, the fathers of the constitution were slave owners, races are different. It carried a news story of a rape case involving a negro and white girls.

The Jews are implicated in the issue because they are behind this race mixing. It is another Jewish plot. Proofs: head of NAACP...

That is the National Association for the Advancement of Coloured People.

...is a Jew, rabbi supports Civil Rights Bill; Zionist organization comes out for racial equality. Conclusion: Jews trying to destroy both races.

Then, at page 1860 there is this comment by Mr. Justice Wells:

This issue concentrates on an allegation of personal misconduct by the late President Kennedy. It describes President Kennedy as "a debaucher" and a "very, very nasty monkey".

On Issue 55 of January, 1964, he said:

Most of the issue No. 55 discusses the Jewish problem ...

And listen to this:

... Page 1 concentrates on revealing the Communist Jewish conspiracy which led to President Kennedy's assassination. The conspiracy is established in various articles by these facts: The Jews were dissatisfied with President Kennedy because of his support of Nasser; Jack Ruby was a Jew; ...

He is the person who killed Oswald, you will recall.

...the first person Oswald consulted after his arrest was a Jewish lawyer; the Fair Play for Cuba Committee was formed by a Jew; the TV station which gave Oswald air time was owned by a Jew; Oswald spent some time in Russia.

All of which obviously proves that the Jews killed Kennedy.

Then, again, these are some of the headlines in the same issue:

Jews support Civil Rights march; President Johnson's daughter to marry Jew; Israel shipping drugs to U.S.; Lady Bird has Jewish blood—"have you noticed her nose"—Jew opposes flying the Confederate flag; President Benjamin Franklin did not like Jews.

Then, at page 1861—I am referring to many places here which deal with the Negro question, because this is not only a Jewish problem. Next to the Jews the ones who are attacked are the Negroes and the Catholics. I will just read this one which relates to Issue 57 of March 1964:

On the Negro question, the issue had an article on page 10 entitled "Negroes Taking Over TV". It pointed to the recent trend of TV shows to include a negro actor. The article asks "But do they play their true, bestial way of life—that of rapists, muggers, stabbers, robbers and murderers—No." They play hero parts. This is the product of Jewish control of TV networks.

Those are some examples, but there are many more that I could mention.

I shall cut short many of the things I was going to present to you, and shall proceed to some of the specific items that were distributed here.

This is a document dated January, 1965, which comes from St. Petersburg, Florida and which is entitled: "Our leader Jesus Christ: National Christian News", and then underneath is the heading: "Satan's organization exposed...the Illuminati", which is an organization of Jews supposedly which has as its objects:

1. Hatred of God and all forms of religion except Judaism.
2. Destruction of private property and inheritance.
3. Absolute social and racial equality, promotion of class hatred.

and so on. I will file this. On the back there is a crude drawing which is headed: "Satan's agents, the Rabbis."

(Document entitled "Our Leader Jesus Christ: National Christian News," filed as Exhibit 4.)

**Mr. Herman:** I have here a letter dated February, 1964 which was sent out by Post Office Box 431 in Scarborough, Ontario, which was David Stanley's box. This calls for the sterilization of Jews, and in part it reads:

On the Jewish Question our policy is much stricter. We demand the arrest of all Jews involved in communist or Zionist plots, public trials and executions. All other Jews would be immediately sterilized so that they could not breed more

Jews. This is vital because the Jews are CRIMINALS as a race, who have been active in anti-Christian plots throughout their entire history.

**The Chairman:** What is the date?

**Mr. Herman:** February, 1964.

**The Chairman:** This will be Exhibit 5.

(Letter dated February, 1964, filed as Exhibit 5.)

**Mr. Herman:** I have here an envelope that was sent through the mails. I will not go into the details, but we have a tie-up here between the Socialists and the Zionists to set up a new frontier in the United States. This is full of anti-semitic and anti-Negro garbage.

(Envelope, filed as Exhibit 6.)

**Mr. Herman:** They now say that the story of the 6 million Jews that were cremated Nazi Germany is untrue. I have here a publication which apparently was printed in Sweden, but it has stamped on it: "Canadian Publications, Gooderham, Ontario, Canada", and on the back it has an advertisement for a book entitled *Money Creators* and on the front it says:

The Falsehood about the six million Jews said to be gassed by Hitler exposed.

**The Chairman:** Exhibit 7.

(Publication stamped "Canadian Publications, Gooderham, Ontario, Canada," filed as Exhibit 7.)

**Mr. Herman:** On one occasion there were dropped thousands of these little leaflets from the top floor of a building on Adelaide Street East at the corner of Victoria. Thousands of these were distributed. They were thought to have been dropped by an airplane. It reads:

Communism is Jewish. Get Facts!  
Write—World Service, P.O. Box 3848,  
Fairview Sta., Birmingham, Ala., U.S.A.

**Senator Choquette:** That is in Toronto?

**Mr. Herman:** Yes, Toronto.

**The Chairman:** This will be Exhibit 8. What was the date of it?

**Mr. Herman:** November, 1963.

(Leaflet dated November 1963, filed as Exhibit 8.)

**Mr. Herman:** I have here an envelope with its enclosures that was mailed—there is no

date on it. The postmark is illegible, but it must be recent because there is a reference in it to the Beatles. While it advertises the sale of *The Protocols of the Learned Elders of Zion*—it all came from Flesherton, Ontario, and Flesherton, Ontario is where Ron Gostick and his group hang out—and it reads:

THEY give you the Beatles and call it Art.

Yeah! Yeah! Yeah!

THEY mix religion with communism so you can't tell'm apart.

Yeah! Yeah! Yeah!

THEY give you sex and filth to destroy your morality.

Yeah! Yeah! Yeah!

THEY tell you it's "Brotherhood Week" love your enemy.

Yeah! Yeah! Yeah!

THEY condemn "National Socialism" as an evil which has to be stamped out.

World Government is their Target, Race is out!

THEY call us crackpots, hatemongers and such.

"Hey Mac, snap out of it! Find out what is what.

Who are THEY??? read:

*The Protocols of the Learned Elders of Zion* Price \$1.00 available from: Canadian Intelligence Service, Flesherton, Ontario, Canada.

**The Chairman:** Exhibit 9.

(Envelope and contents, filed as Exhibit 9.)

**Mr. Herman:** I have an envelope here that was shipped to Mr. David Orlikow, a member of the House of Commons, dated May 9, 1965, and the heading on the contents is:

THE COMING RED DICTATORSHIP—Asiatic Marxist Jews Control Entire World—

**The Chairman:** Exhibit 10.

(Envelope dated May 9, 1965, and contents, filed as Exhibit 10.)

**Mr. Herman:** I have here another envelope mailed to somebody in Don Mills, which contains a number of pamphlets, one of which is headed: "Eichmann speaks!" Which contains a

letter supposedly from Eichmann himself in which he says:

And I fear, the fate of humanity depends upon the extermination of the Jewish and other traitors to the humanity.

**The Chairman:** Exhibit 11.

(Envelope containing pamphlets, filed as Exhibit 11.)

**Mr. Herman:** I mentioned previously the report from Chief Justice Wells which referred to *The Stormtrooper* magazine. I have some of them here. These were distributed in the United States and it is significant that they have advertised in it one publication on what is called:

THE BIG LIE! Photostats showing that Hitler not only did not invest the "big lie", but exposed it as the method of the Jews, and exposing the BIGGEST lie about "six million dead Jews".

(Magazine *The Stormtrooper*, filed as Exhibit 12.)

**Senator Choquette:** You have accumulated all that material, but I do not think anybody else has. We are very interested, but if we were to receive that we would probably throw it in the wastepaper basket. How serious do you think that problem is throughout Canada, and how seriously do you think it will be taken by true Canadians?

**Mr. Herman:** Unfortunately it takes only one person with a warped mind to receive this, pay attention to it and influence others. Every office has a Xerox machine nowadays and all that person has to do is to put the material in the machine, get as many copies as he likes and distribute them. Let me show you this document. This was pictured in an issue of *Maclean's* magazine and exhorts white people to stand and fight against the black, saying that every thirty minutes a woman is raped somewhere in the U.S. Imagine the situation of a negro boy working among fifty girls if somebody with a warped mind in that office got hold of a copy of this and distributed it among these girls. They may not harm him, but he would certainly be held up to hatred, ridicule and contempt, as the legal phrase goes. Unfortunately history has established that if these things are repeated, and repeated often enough, there will always be people who will believe them and be prepared to do harm because of this sort of thing. It is what the Nazis thrive on.

It is very significant to learn in the newspapers this week that Beattie now has a permit to speak in Allan Gardens in Toronto on May 5, and he will start all over again. It is also significant that last week in London these copies of *World Observer* were distributed. They were distributed because it was hoped they would appeal to somebody, that somebody would believe the stuff and repeat it because of their own frustrations or because for some reason or other they have something against Jewish groups. I will put these in and let you read them. I have here an issue of *World Observer* dated February 17, 1968, only last week.

Two weeks ago this document was distributed in the streets of London, Ontario, headed by the N.S., National Socialists, and it says it was printed and distributed at 76 Wellington Street, London, Ontario. It was distributed on the streets of London two weeks ago by a man named Martin Welche. It is headed:

Only Nazi's Niggers & Kikes?

No! It's you we want.

It has a vicious sort of cartoon. This is the sort of gabrage that appeals to weak and perverted minds and creates distrust by people who have been the victims of it.

(Issue of *World Observer* dated February 17, 1968, filed as Exhibit 13.)

**Senator Choquette:** What would you say about the propaganda against French Canadians since the first war, and longer than that? People have said, "Let's throw all the French Canadians in the St. Lawrence River. Let's get rid of this trash and let Canada go forward." Do you think we should try to cover that? I do not, and I am a French Canadian.

**Mr. Herman:** But as a French Canadian you will recognize the fact that there are some people who are victims of that type of propaganda. That is the point. No matter how ridiculous and outrageous it is, there are some people who will pay attention to it.

**Senator Choquette:** I know, but my argument is that you do not find French Canadians who will try to shove this type of legislation down people's throats. You see the difference.

**Mr. Herman:** This type of stuff you mean?

**Senator Choquette:** Yes. The French Canadians have not for a period of years

asked to have this type of legislation passed, but all kinds of statements are made against them.

**Mr. Herman:** I personally cannot speak for French Canadians, but I think possibly they should have asked for it. I think it might have helped racial friendship a great deal in this country.

**Senator Laird:** In your opinion, is there not sufficient protection in the libel laws?

**Mr. Herman:** The legal side of this will be dealt with by Mr. Harris. I am only producing the facts and I propose to deal with the immediacy of the problem.

**The Chairman:** Mr. Herman's presentation was intended to place before us some of the material they have, giving us examples of the kind of things they were concerned about. The brief and arguments in favour of the legislation will be presented by Mr. Harris.

**Mr. Herman:** That is exactly the position, Mr. Chairman. I submit with respect that the problem is a serious one, it is one that can become more serious, and it is immediate. This sort of propaganda is being put out. We had a letter from Vancouver yesterday with some complaints; we had a letter from London, Ontario, two days ago saying that Weiche was on the streets of London only last week. We read in the Toronto newspapers two days ago that Beattie is appearing in the parks on May 5. I submit all these facts for your consideration.

**Senator Roebuck:** The libel law applies to individuals and there are such things as the libel of business. Is there any libel law applying to groups?

**Mr. Herman:** I am also a lawyer but I do not know of any.

**Senator Roebuck:** Neither do I. I wanted that on the record since the question has been asked.

**The Chairman:** Neither civil nor criminal.

**Mr. Herman:** I certainly do not know of any. May I thank you, gentlemen. I am sorry I took so long.

**Senator Choquette:** A very good presentation.

**Mr. Garber:** I would like to introduce Mrs. Rosenthal, National President of the National Council of Jewish Women, who has just arrived.

Mr. Sydney Harris, the former Chairman of this committee, did a great deal in drafting the brief, which he will now present.

**Mr. Sydney M. Harris, Q.C., Vice-Chairman, Central Region, Toronto Canadian Jewish Congress:** Mr. Chairman, honourable senators, I propose to start by indicating that we had, and still perhaps have, a plan of presentation. It may make it easier for us to deal with the matters that you raise and for you to apprehend and follow the presentation that we make. Mr. Herman has presented a factual study of the type of material. With your permission, I propose to read to you the brief that we have prepared and which is before you. Then the other members of the delegation, myself and Mr. Herman will to the best of our ability deal with such questions as you may raise.

**The Chairman:** May I make this suggestion for the purpose of clarity. I suggest that we permit Mr. Harris to read the brief first, during which the members of the committee could mark the areas on which they wish to question him. After the presentation of the brief we can have questions.

**Hon. Senators:** Agreed.

**The Chairman:** Then we will proceed on that basis.

**Mr. Harris:** Thank you, Mr. Chairman. To some extent some of the matters I shall be reading to you are familiar to you, but from experience I have found that it does not do too much harm sometimes to repeat and underline certain things, so with your permission I will read the prepared brief and then my colleagues and I can comment and deal with your questions.

Honourable senators, the Canadian Jewish Congress is the organization fully representative of the Jewish community in Canada, a community with a population of upward of 250,000 according to the last census. Founded in 1919 it has since been the acknowledged spokesman of the Jewish community on public issues and has been recognized as such by municipal, provincial, federal and international authorities. In its program of community relations the Congress enjoys the active partnership of B'nai B'rith of Canada with whom it has a joint committee in this area of interest.

Your committee is meeting to consider the bill which has been introduced to meet the

evil of hate propaganda. This bill was introduced following the Report of a Special Committee set up by the late Hon. Guy Favreau, then Minister of Justice, to inquire into this problem and recommend the most effective way of dealing with it. The seven distinguished men whom Mr. Favreau named to this committee were in our view admirably fitted by their background, training and experience to examine this problem. The chairman was Prof. Maxwell Cohen, Dean of the McGill University Law School. The other members were Dr. J. A. Corry, the principal of Queen's University in Kingston, whose own field of teaching is political science and law; Abbé Gérard Dion, a sociologist teaching at Laval University in Quebec, whose views on social issues are known throughout Canada; Mr. Saul Hayes, Q.C. of Montreal, executive vice-president of the Canadian Jewish Congress;—who is with us today; Dr. Mark R. MacGuigan, a Maritimer by birth, who at the time of his appointment was professor of law at the University of Toronto, lectured at Osgoode Hall Law School, and is now Dean of Law at the University of Windsor and who at the time he served on the Special Committee and until his departure from Toronto was President of the Canadian Civil Liberties Association; Mr. Shane MacKay, who was then executive editor of the Manitoba Free Press; and the Honourable Pierre-Elliott Trudeau, then professor of law at the University of Montreal.

The members of this Special Committee on Hate Propaganda were members of the bar who traditionally and professionally are alert and conscientious in the defense and protection of the freedoms of the individual, sensitive to any attempt to deprive the citizen of the basic and fundamental rights which are his in law; a sociologist and political scientist who have studied social problems and political trends and who are well informed on the vexing complexities of our society; and a journalist who has a personal and professional stake in freedom of the press and freedom of expression and who has reason to be vigilant about any measure that would diminish or inhibit this freedom.

This body of men composed we repeat, of persons dedicated to our tradition of free speech and civil liberties and having examined in detail the evidence, some of which you have now seen and which you will find permanently embodied in their Report, determined unanimously that the protection of

individuals as members of groups in our society required the enactment of legislation to curb the spreading of racial and religious hatred.

Their conclusions were:

that freedom of speech is not an unqualified right; (Report of the Special Committee on Hate Propaganda in Canada 1965, page 60, 1.5 ff.)

that the law has exerted a role in balancing conflicting interests;

that in this delicate balancing preference must always be given to freedom of speech rather than to legal prohibitions directed at abuses of it; the legal markings of the borderline areas should be such as to permit liberty even at the cost of occasional licence;

that at the point that liberty becomes licence and "colours the quality of liberty itself with an unacceptable stain the social preference must move from freedom to regulation to preserve the very system of freedom itself" (Report, page 61)

that with respect to the offense of genocide or its advocacy no social interest whatever exists in allowing the promotion of violence even at the highest level of abstract discussion: "the act is wrong absolutely, i.e. in all circumstances, degrees, times and ways". (Report, page 63)

that the distribution of hate propaganda reported in all parts of Canada is a serious problem; (Report, page 59)

that this material can not in any sense be classed as sincere, honest discussion contributing to legitimate debate, in good faith, about public issues in Canada; (Report, page 59).

that given a certain set of socio-economic circumstances, public susceptibility to such material might increase significantly and that its potential psychological and social damage "both to desensitized majority and to sensitive minority groups is incalculable" (Report, page 59).

that our Canadian law is "clearly ...inadequate" with respect to the intimidation and threatened violence

against groups and "wholly lacking" and "anachronistic" in the control of group defamation (Report, page 59).

and finally—

that the interest of our society requires legislation curbing such excesses and that appropriate legislation would constitute a needed control over excesses of speech and not an infringement of freedom and speech. (Report, page 60)

These conclusions were reached after many months of factual study, discussion and examination, and having regard to the many conflicting interests involved in any examination of such a problem.

Dealing with the question of incitement of hatred which leads to a disturbance of the peace the Committee states that "To our minds the social interest in public order is so great that no one who occasions a breach of the peace, whether or not he directly intended it, should escape criminal liability where the breach of the peace is reasonably foreseeable, i.e. likely" (Report, page 63) The requirements are that these statements must be made in a "public place", they must create "hatred and contempt" against a racial religious or ethnic group and they must be likely to lead to a breach of the peace". These provisions, the Committee feels, "will protect fully all legitimate discussion". (Report, page 64)

With respect to extending the protection against defamation enjoyed by the individual to the group—and this is a matter which was raised by one senator a few moments ago—the Committee finds that

there is needed a criminal remedy for group defamation that would prohibit the making of oral or written statements or of any kind of representations which promote hatred or contempt against any identifiable group. Identifiable group we propose to define as any section of the public distinguished by religion, colour, race, language, or ethnic or national origin. (Report, page 64)

The Report states further that

"We are convinced that the evidence justifies this policy judgment and that in our present stage of social development the law must begin to take account of the subtler sources of civil discord." (Report, page 65)

The Committee Report then discusses the safeguards it feels should be written into a law of this kind and goes on to say:

The history of law and opinion as concurrent developments is replete with instances...not only where law reflected the state of opinion but where a fluid opinion was itself crystallized by law. This generation of Canadians is more sensitive to the dangers of prejudice and vicious utterances than ever before. Such public opinion, therefore, should now be prepared to crystallize these sensitivities, fears and doubts into positive statements of self-protecting policy—namely statements of law. (Report, page 57)

We shall return to the content of the Report of the Special Committee.

Let us now turn for a moment to another jurisdiction.

The British Experience:

Frequently in public discussion of this question references are made to "Speakers' Corner" in London's Hyde Park where it is stated that any person could rise and speak his piece on any theme, subject to no restriction whatsoever. What are the facts on Hyde Park?

Great Britain is rightly regarded as the source and fountain-head of our traditional freedoms. The inviolability of British civil freedoms has always been the envy of other lands and political systems. Great Britain, recognizing the need for the balancing of the same conflicting interests, has after considerable debate and discussion enacted a Race Relations Act. This Race Relations Act not only bans discrimination—something eight out of ten Canadian provinces already have undertaken and which in certain respects the federal Government has undertaken as well—but outlaws the defamation of racial and ethnic groups. And the British law, we might add, does not possess the protective safeguards that are written into the bill before your committee.

This Race Relations Act of the United Kingdom has been in force since October of 1965 and has been invoked several times. On a recent occasion it was used to restrain the call to violence against the White majority element by a leader of what has been called the Black Nationalist movement. There has been no complaint editorially by the ever-vigilant British press or by the legal profes-

sion that has come to our attention—and we have followed affairs there rather closely—and no evidence that the fibre of British parliamentary democracy is any the weaker. On the contrary it has emerged re-inforced and sounder.

It should be clear that many people labour under a misapprehension with regard to Hyde Park. Hyde Park is, of course, not immune from the provisions of the Race Relations Act. Speeches given there are as much subject to the law of the land as those given elsewhere.

Great Britain has recognized the need for group protection of this kind; we with our more varied population make-up have even more reason to do so.

#### Psychological and Psychiatric Aspects:

Under the heading of "Psychological and Psychiatric Aspects" our presentation is based on the evidence offered by three outstanding studies. The first is the Social Psychological Analysis of Hate Propaganda done by Dr. Harry Kaufmann (formerly associate professor of Psychology at the University of Toronto, now on the faculty of Hunter College in the City University of New York) appearing as Appendix II of the Report of the Special Committee on Hate Propaganda to which I have referred.

It is generally agreed that law has a duty to secure the integrity of citizenship and of citizens. In respect to racial and religious discrimination this obligation is directed not so much at punishing the person who practises discrimination but to underline the principle of equality of citizenship. Groups of people must not be denigrated. It is the proper function of law to ensure the fair treatment of citizens. This is the principle underlying the Human Rights laws and the anti-discrimination laws of Canada and of eight of our provinces going back to the first enactment in Ontario in 1944 of a law which forbade the display of placards indicating racial or religious discrimination. Professor Kaufmann's study is concerned with the communicators of hate propaganda, its recipients, and the target group. His study confirms that such propaganda can gain and has gained acceptance and compliance, that

recipients will be receptive to hate literature to the extent that they believe themselves to be threatened and consider action open to them which can eliminate this threat. (Report, page 196)

As for the target group, he states:

Through no fault of his own, a member of society is being degraded and humiliated. He is on guard against the insults, the sarcasm, the cruel humour accorded to his group... (Report, page 214)

He concludes by saying

The writer is not competent to judge the possible legal side effects of legislations applicable to the problem at hand, but has considerable evidence of the undesirable effects to hostility-generating propaganda, both upon potential converts and targets. (Report, page 230)

Dealing further with the possible effects of legislation he says it may create

A reassuring knowledge to targets and potential victims that they enjoy the clear protection of society not only against physical attack or individual calumny, but also against the threats and vilification directed against them as members of a religious, ethnic, racial, or other group. It is quite likely that such a reassurance through legislation would go a long way toward removing motives for unregulated self-protection. (Report page 230)

We occasionally hear the comment that the hate material circulated is so childish and unbelievable that it would incite hatred and contempt for its authors rather than the persons against whom it is directed.

We are quite prepared to concede that this is the reaction of many normal people. If we were not living in a period when the world saw the planned extermination of an entire people preparatory to the destruction of other European peoples and races—an event which happened only yesterday and whose survivors are living amongst us—we would be quite prepared to accept this apparently "normal" reaction to the extremities and absurdities of hate propaganda. But we know that these things did happen. Despite the apparent juvenile and self-evident absurdity of the propaganda an entire death machine functioned in Europe in the 1940s which carried out a literal implementation of the threats of hate propaganda. And may I say, parenthetically, that some of the same threats are included in the material that has been placed before you today.

In 1967 a volume appeared entitled "War-rant for Genocide" by Norman Cohn, Director

of the Centre of Research in Collective Psychopathology of the University of Sussex. Professor Cohn's book is an extended analysis of the growth and expansion of the myth of a world-wide Jewish conspiracy already referred to by Mr. Herman as *The Protocols of the Elders of Zion*. We cannot hope within the limitations of our submission to give even a rough abridgment of its contents, but recommend it to the attention of the honourable senators. We are pleased to present this copy of the book to the committee as a further exhibit. Suffice it to say that it is an exposition of how a myth—a demonstrably false myth, and one that maligns an entire people—can take hold of the credibilities of wide masses to the extent that it helped prepare the atmosphere and climate for the genocide of World War II. The internal inconsistencies and contradictions of this libel—in Russia the propaganda pictured the nefarious plotters as allied with the Germans, in Germany as joined with Britain and France, and in Britain as linked with Russia and Germany—in no way inhibited its spread and acceptance.

This material, specifically the forgery known as *The Protocols of the Elders of Zion*, is, as we have already shown, no stranger to this country and to this continent, and is still in circulation.

We commend Dr. Cohn's book to your study as the examination of a clinical case of the distribution of material that is false and maligns and directs hatred and contempt against a religious group. Neither its evident absurdity nor its extremes of fantasy prevented it from becoming a powerful motivating force and accessory to widespread destruction and bloodshed.

That the implications of this propaganda are related to its nature rather than to its volume is suggested by a finding of the Special Committee:

"The amount of hate propaganda presently being disseminated and its measurable effects probably are not sufficient to justify a description of the problem as one of crisis or near crisis proportions. Nevertheless the problem is a serious one. We believe that, given a certain set of socio-economic circumstances, such as a deepening of the emotional tensions or the setting in of a severe business recession, public susceptibility might well increase significantly. Moreover, the potential psychological and social damage of hate propaganda, both to a desensitized major-

ity and to sensitive minority target groups, is incalculable. As Mr. Justice Jackson of the United States Supreme Court wrote in *Beauharnais v. Illinois*, such 'sinister abuses of our freedom of expression...can tear apart a society, brutalize its dominant elements, and persecute even to extermination, its minorities'."

The Committee is warning here that it is not quantity that is important in the spreading of hate propaganda but the danger that such material by providing a breeding ground might create a deterioration of the atmosphere, a deterioration whose consequences we have seen.

In this connection we have a third document that is directly relevant.

I believe that at the commencement of my presentation copies were distributed to you which you now have before you. It is the full affidavit to which I am about to refer and my words will introduce to you the circumstances in which it came into being. Less than two years ago a psychiatric report prepared for use in the Ontario Court of Appeal was provided by way of affidavit by a Toronto psychiatrist in the case of a resident of that city facing a charge of assault occasioning bodily harm which arose from one of the incidents in Allan Gardens precipitated by a neo-Nazi agitator. The appeal was taken against a prison sentence, the accused having pleaded guilty. The appeal, we may add, was successful (Report, page 59), the sentence having been reduced to a nominal fine.

Having recounted in this psychiatric report the personal history of the defendant during the Nazi holocaust, the imprisonment, the torture, the personal brutality and beating, the planned starvation and the annihilation of his family, the report then deals with the events at Allan Gardens in the summer of 1965. And now quoting from the psychiatric report:

On May 30, 1965, one of his friends invited him to come along to Allan Gardens where a Nazi demonstration was scheduled. He could not believe that such a thing was possible and he went along to the meeting place, partly out of curiosity and partly to express his opposition to a revival of the dreaded past. He was shaken up by the horrible idea that his children might lose their lives in a Nazi crematorium which he had seen in function while in concentration camps. At the sight of the Nazis with their swastikas

the assembled crowd started shouting and running towards them. Suddenly he felt hot and feverish and everything was boiling inside him and he was unable to control himself when he became part of the fighting mob. When taken to the police station his mind went blank and he was unable to think of anything but of his family.

May I say parenthetically that this was the second family, his first having been wiped out. The psychiatrist goes on to say the following:

As a result of my studies and my experience in practice, and my interview with Mr. D-, it is my opinion in regard to him that, (a) Mr. D- is one of those survivors of the Nazi holocaust who have tried to bury the unfortunate past by adjusting themselves to the society of their choice which was helpful in the process of repressing the past to a considerable degree. His hate against his criminal tortures was never allowed to find an outlet, neither during the years of persecution nor following the Nazi empire's breakdown. However, it was sufficiently securely repressed and chances are that it would never have come to the fore without the provocation of a public Nazi demonstration. The latter may appear childish, silly and ridiculous to the majority of people who were not directly afflicted by the Nazi atrocities. On the other hand to a person who has been a personal victim of these atrocities with all their consequences to himself and to his beloved ones, a demonstration must evoke the most profound fears leading to a loss of control which would be unthinkable under any other circumstances. To this person it means the most horrible threat of an imminent or already existing revival of the past, threatening his very existence and possibly destruction of his family. It is well known that this type of experienced threat, although irrational in the eyes of the unbiased observer, is apt to create a state of panic with short circuit reaction, loss of control and violence. This process is much more likely to occur in a group than when the person is confronted with this situation as an individual,

There is much more in the psychiatrist's analysis and we append it herewith.

#### The Law as Public Policy:

In the 1940's and to some extent in the 1950s in the effort for fair employment and fair housing legislation we found ourselves immersed in the debate as to whether education or legislation were more effective instruments in coping with the social problem of racial and religious discrimination. Time has fortunately resolved that debate. The experience with such laws in Canada since 1951 has established, as we argued then, that the two instrumentalities must accompany each other—and that legislation is itself an extremely effective form of education. The existence of these laws, public knowledge of them and their enforcement are acts which are themselves educative in nature, and which reflect public policy as enunciated by government.

The bill before you deals with a question on which the government cannot be neutral any more, as is now recognized, than it can be neutral on racial and religious discrimination in employment and housing. It will stand as a formulation of public policy expressing the wish and goal of this nation as represented by its Parliament.

#### The Need for Legislation:

In confirmation of our position on the need for effective legislation we cannot better underline our view than to cite to this Committee the very cogent words of Chief Justice Gale of the Ontario Supreme Court who addressed the York County Law Association in Toronto in the following words in part:

As you know, all criminal law involves a balancing of the rights of the individual on the one hand, and the rights of society on the other. Our Criminal Code is a statement of the rules which have evolved to place limits on the freedom of action of every individual so as to safeguard the basic rights and freedoms of all individuals...

Let me give a very simple illustration of the problem involved. Freedom of speech is a time-honoured liberty in Western legal systems, and has now been made a part of the Canadian Bill of Rights. But it is not, as it cannot be in any organized society, an unlimited right. The right to speak one's mind is not a licence to preach vilification and violence...

...Recently, we have all been made aware of the inability of our present legislation to curb the evil outpourings of

'hate propaganda'. The Attorney-General of Ontario has stated his view that the existing provisions of the Criminal Code cannot stop this despicable flow of speeches and writings. Certainly, here is an example of a situation where the individuals' freedom of expression must give way to the broader interests of social cohesion and racial and religious freedom...

It is my concern that too much stress has been laid upon the privileges of the individual, as an isolated person, an island unto himself, and not enough upon the duties and obligations which are his as a member of that society. In my view, it is the "rights" of society that are experiencing a subtle but continual erosion, and individual liberty, far from diminishing, is expanding to the detriment of the collective safety and welfare.

I realize, of course, that this is not a popular position to take before a gathering of lawyers. Traditionally, and properly, the role of the lawyer has been to protect the interests of the individual, and his historical rights and immunities. Such a role is no more than natural; after all, the lawyer is retained by a person or by a group of persons for that very purpose. He is trained from the first that it is not only his prerogative but his duty to keep his client out of the clutches of the law. The state, acting on behalf of the individual, defends. The whole tradition of the common law justly favours the man accused of an offence; and the first lesson law students are taught is that it is far better that one hundred guilty men go free than that one innocent man be punished for a crime he did not commit.

I do not quarrel with these principles. Indeed, I subscribe to them without reservation. However, what does concern me is that, in carrying out its time-honoured responsibilities, the legal profession is at times prone to lose sight of the public welfare. May I remind you that it is our duty to see that the interests of the community, as well as those of the individual, are recognized and protected.

The real difficulty, of course, is to maintain a proper balance between personal rights and the common welfare. To achieve anything approaching such a balance has always been a formidable task. It is destined, however, to become an even greater one unless we take care to

ensure that the fundamental right of the community to protection is not dissipated by exaggerated solicitude for the immunities of its members...

My principal object this evening, has been to bring to your attention the need for the legal profession to be as jealously vigilant of the public welfare as it has traditionally been of the welfare of the individual. Without question or doubt, one of the greatest principles in our criminal jurisprudence is that which ensures that a man is presumed to be innocent until he is proven guilty beyond a reasonable doubt. I wholeheartedly and sincerely subscribe to that rule. But there is another fundamental and essential principle that operates in our criminal philosophy, and it is this: the criminal law exists not for the protection of the individual as such, but for the protection of society as a whole.

In these days, I fear that too little attention is paid to this latter principle. It is our duty and responsibility—all of us engaged in the administration of justice—to ensure that it is honoured and preserved.

#### The Bill and its Safeguards:

The bill at present before you substantially follows the report of the Special Committee on Hate Propaganda save in two respects. No one to our knowledge opposes the ban it proposes to place on genocide or counselling genocide, it being in substantial agreement with the United Nations recommendations on this subject, and it commends itself to the conscience of all civilized nations.

The section on incitement to violence proposed in Bill S-5, which would then be under section 267B (1), is a refinement of other provisions already included in the Criminal Code. In very large measure some of the critics of this section proceed on a preconceived notion of what it says, not having taken the trouble of reading its text. The taking of an action likely to lead to a breach of the peace is a criterion known in the criminal law. Under this section it is not what is said that is crucial but whether it is linked with a breach of the peace—a situation, as stated, familiar to our law.

The Report of the Special Committee throws light on the need for this section:

...It is readily apparent that it should be unlawful to arouse citizens deliberately to

violence against an identifiable group, and in our understanding of Canadian law this already may be proscribed by the present rules in the Code governing sedition (although this is not absolutely certain). But the social interest in the preservation of peace in the community is no less great where it may not be possible for the prosecution to prove that the speaker actually intended violence against a group, or where the wrath of the recipients is turned, not against the group assailed, but rather against the communicator himself, and the breach of the peace takes a different form from that which he was likely to intend. In either case, of course, do we wish to suggest that the attackers who themselves commit a breach of the peace should not be criminally liable, and there is little doubt that they are already liable under existing criminal law. But the gap in the law today derives from the fact that it does not penalize the initiating party who incites to hatred and contempt with a likelihood of violence, whether or not intended, and whether or not violence takes place. (Report, page 63)

The third provision—section 267B(2) as it would become—deals with what is called group defamation. It is important to bear in mind the requirements of this offence:

a) the action of promoting hatred or contempt must be wilful; that is, a deliberate and intentional act, b) the statement must be untrue, and, c) the statement must be one which the accused did not believe on reasonable grounds to be true, or the public discussion of which would not be for the public benefit.

If a defamatory statement is deliberately made about an identifiable group within the definition of the bill, and the person issuing this statement can show no reasonable grounds to believe it true, and if its public discussion is not for the public benefit—what possible protection is owed to such gratuitous and malignant sowing of hatred? If a person knows his tale is false and does not care a whit for the repercussion of the statement, if it has no relevance to the public interest and brings hatred and contempt upon a racial, ethnic or religious group—surely he should face the consequences of this act? The honest statement is protected while the dishonest and malicious one constitutes an offence.

These defenses in our view are safeguards that offer full protection to freedom of speech and freedom of expression. If statements are true, we are fully content that they be made without let or hindrance; if discussion of such statements is in the public interest and if it be found that the speaker or writer had reasonable grounds to believe them true, we are satisfied that there should be no interference with them. These are defenses that are already present in the Criminal Code in respect of defamatory libels and we do not quarrel with their inclusion in this legislation. We go further—we would oppose legislation that does not have these built-in safeguards to protect the full and free debate of social issues centering on the uninhibited discussion of controversial social issues.

Some critics complain of the onus being on the accused to give evidence to support these defenses. This is in keeping with the rules in all defamation cases, the onus being on the accused to establish the truth of his statements. Surely it is not up to the person maligning to prove that he is not guilty of the charges any opponent may dream up?

We would like at this juncture to return to the defense of truth as mentioned earlier. There are a variety of offences known to our law involving defamation and the use of language, where the truth of the statements cannot be used as a defense. These include seditious libel, (section 60 of the Criminal Code), scurrility (section 153) and obscenity (section 150). The broadcasting regulations of the Board of Broadcasting Governors which forbid the broadcasting of "any abusive comment or abusive pictorial representation on any race, religion or creed" (*Canada Gazette* Part II, vol. 98, Feb. 12, 1964, page 172) do not contain this defence either.

By raising this we do not mean to suggest that this defence is not in place. We approve it and have said so in this submission. We are raising it to point out that this bill contains a vital safeguard which is not available as a defense in numerous other offences under our Criminal Code and government regulations.

No "Gag-law":

We wish to make an additional observation. The Report of the Special Committee on Hate Propaganda and the provisions of Bill S-5 do not envisage prior censorship. This bill places no "prior restraint" upon speakers or writers. No public official or policeman has the right to ban any written material or to prevent a

speaker from expressing himself. It has no quality of what is called "prior jeopardy" in American legal terminology. Only a properly constituted court of law is qualified to deal with it when charges are laid after the speech is made or the article published. The full procedural requirements must, of course, as in all our criminal courts be completely adhered to. Neither policeman nor magistrate can interfere in advance and forbid any actions or words. All this is left to the courts and to the courts alone to decide. Talk of a "gag-law" or of capricious and dictatorial banning of speakers or articles is irresponsible and unwarranted in the face of the clear provisions of the bill.

#### Permission of the Attorney General:

We should point out to the Committee the remarks of Chief Justice Wells of the Ontario High Court of Justice in a recent public address in Toronto.

#### Chief Justice Wells said:

... when, however, it (i.e. 'international defamation which is sometimes used to the disadvantage and hurt of the Jewish people') reaches the extremes which it has done in our own experience and lives it would seem to demand something more and the power of the state must, I think, be invoked to protect any group which is subject to the vilification which has been expressed from time to time in various parts of the world...

#### He went on to say:

I would personally advocate the necessity of obtaining the consent of one of the Attorneys General of a province or of the Attorney General of Canada...before such charges should be proceeded with. As long ago as 1938 Chief Justice Duff, in dealing with problems not too different from the defamation of a racial minority, pointed out that already under the law, the right of public discussion is subject to legal restrictions and these he based upon considerations of decency and public order and the protection of various private and public interests, which for an example, are protected by the laws of defamation and sedition. He defined 'freedom of speech' by quoting some words of Lord Wright in a famous judgment where he said that 'freedom of speech is freedom governed by law.'

#### Chief Justice Wells also said:

... it is vitally important that when some law to regulate attacks of this sort is finally put in legislative form, it should be one which will hold the balance between fair speech and freedom of expression on the one hand, and ordinary decency on the other.

It may well be that Chief Justice Wells' suggestion as to an Attorney General's fiat being a condition precedent to a prosecution is one which should be given effect to.

#### Definition of Identifiable Groups:

We have a question to posit on the definition of identifiable groups: the category of "religion" has been omitted from the lost of descriptive qualifications in Bill S-5. This in our view is a serious omission. It was present in the recommendations of the Report of the Special Committee and we can find no adequate reason for its removal. We understand the reluctance of the drafters to include religion if they had the idea that religious controversy would in some way be inhibited or constrained. This is in no way intended. Nothing in the bill in any way restrains the discussion of religious views, doctrine, dogma or conviction. It is hatred or contempt against the people who are embraced by the religious definition. Criticism of Judaism, Mormonism, Catholicism, Buddhism, or Islam could not possibly come under such a provision. It is when members of such religious groups are subjected to hatred and contempt quite apart from their beliefs and convictions that it is felt the protection is needed. It is not enough to say that religion is something anyone can change for himself. For most of us our religious affiliation is something we are born into and which we cherish deeply, not to be shed or cast aside lightly. It is as much a part of our character, personality, and identity as our race and nationality, possibly more so. We have no objections to our religious views and practices being publicly discussed and argued, even criticized. There are a host of views held by various religions on a wide variety of subjects—all of which are constantly discussed in the public forums and which we fervently hope will continue to be discussed as long as our present political system lasts. But when charges are made, for instance, that Jews require human blood for ritual purposes, surely this kind of abusive defamation of a group should be covered in the legislation.

We appreciate that an alternative category may be provided, that some groups—the Jews for instance, perhaps the same may apply to the Mennonites—may be considered under the category of an ethnic group. We do not wish to enter into the controversy of whether the Jews are a racial group, an ethnic entity, or a religious communion. There is no doubt in our mind that a case could be made out for each of the latter two categories, neither of which excludes the other. However, the religious element is common to both. Even the so-called secularist Jew, though he may not himself subscribe to all the tenets and practices of Judaism as a religion, will concede that the Jewish religion is the historic source of Jewish values from which their ethical imperatives are derived. The most consistent and historic definition of Jewry and Jewishness, the one common to Jews of all lands, is its basic religious identification. It would be a mockery of the intention of this legislation if for flimsy pretexts the category of religion were omitted.

One explanation is that the Jewish group would be embraced in the definition of the other two categories. The other two categories, we presume, would be race and ethnic origin. We would unequivocally reject race as a category as contrary to scientific knowledge and to Jewish tradition. As for ethnic origin, as stated above, we would not deny categorically that Jews are an ethnic group. However, it is apparent that Jews themselves differ on this definition. In the censuses of 1931 and 1941 the difference between the number of Jews in Canada who were Jewish by ethnic origin and those who were Jewish by religion was less than one percent. However, in the next two decades, perhaps due to growing nativization and acculturation, the discrepancy between the two figures widened. Of the 204,836 Jews by religion in the 1951 census, 11.3% were of some other ethnic origin. Of the 254,368 Jews by religion in the 1961 census, a much higher figure of 31.9% (81,024) were reported to be of some other ethnic origin. It is apparent therefore that many—Almost 32% of the Jews in this country—account themselves or are accounted to be Jewish by religion only and not by ethnic origin. The rest are content to be identified with both categories.

What emerges from this is that, however they may differ on the question of ethnic origin, Jews clearly constitute a religious group. The same may well be said of other religious groups.

We respectfully suggest, therefore, that in 267B (5)(b) the word "religion" be added to "colour, race, or ethnic origin" as a means of identification.

#### Wide Support for Legislative Action:

Since 1964 when a group of hate-mongers stepped up their agitation there has been a persistent feeling by Canadians in all walks of life, from all political parties, and from a representative cross-section of their communal organizations, that the government has a responsibility in curbing this unrestricted hate dissemination. This support has not been couched in terms of specifying the precise nature of the laws needed, but it has clearly stated that legal measures should be taken. It has come by way of via unanimous resolutions of the Manitoba and Ontario legislatures, a resolution of the Executive Committee of Metropolitan Toronto, resolutions of the Canadian Federation of Mayors and Municipalities and the parallel Ontario organization, the City Council of London, Ontario and the East Nova Scotia Mayors' Association. Three barristers' organizations—the Canadian Bar Association, the York County Law Association, and the Manitoba Bar Association—have passed similar resolutions. The Canadian Baptist Federation sent a telegram wire to the Prime Minister asking for remedial action, the Rev. James Mutchmor, speaking in Winnipeg as Moderator of the United Church of Canada spoke similarly, as did the Anglican Bishop of Toronto. The National Council of Women of Canada and the Canadian Legion, assembled in convention, expressed the desire for such measures as did several local Rotary and Kiwanis groups.

These spontaneous expressions reflect a groundswell of opinion across Canada that a curb be placed on the gratuitous and deliberate dissemination of hatred against racial and religious groups.

Honourable Senators, we appear before you today in support of the legislation embodied in Bill S-5 which we feel, subject to the comments we have made in several respects, is on the whole wisely conceived and drafted. The danger of hate propaganda, as has been stated, lies not in its quantity or volume but in its intrinsic quality, a quality which undermines the climate of our public life.

We have summarized the findings of the Special Committee—basically that legislation curbing incitement to violence and hate propaganda is called for. We have mentioned the example of Great Britain where similar

legislation was introduced in recent years. We have referred to the disturbing psychological and psychiatric implications of hate propaganda, citing three significant documents—the study by Dr. Harry Kaufman as embodied in the Report of the Special Committee, *Warrant for Genocide*, a book by a noted British psychologist on the myth of the world conspiracy and how this myth gained acceptance, and a psychiatric report on a survivor of the death camps presented to the Ontario Court of Appeal. We have dealt with the safeguards the legal draftsmen have written into the bill to ensure protection of freedom of speech, and have shown that the defence of truth is available in this bill though it is not present as a defence in a number of other allied offences.

We have established that this proposed legislation does not permit any prior censorship of speech or writing and we have suggested that consideration might be given to the fiat of the Attorney General being a requirement for prosecution. We have entered a strong plea for the inclusion of religion as a quality of an identifiable group. We have listed the number of professional, communal and political organizations who have asked for the law to intervene in this vital area of human relations.

We urge you, honourable senators, to give this bill your scrutiny and attention—something I am sure you will be doing—for we are optimistic that a close examination of its measures will reveal the positive benefits that will flow from it. This is an opportunity to demonstrate in a practical and affirmative way that in this International Year for Human Rights Canada is serious in the defence of her democratic pattern of life and values and intends to offer these full protection in law.

We therefore look forward with confidence to your committee commending the bill before you.

Thank you for your attention. If I or my colleagues—and I think because of my voice now my colleagues may take an active part—can deal with any of your questions we shall be very pleased to do so. Thank you again.

**The Chairman:** Thank you, Mr. Harris. Any question?

**Senator Laird:** Mr. Chairman, do you recall the explanation given by Mr. Scollin for the omission of religion? It seems a serious omission.

**The Chairman:** As I recall, the explanation given at that time was that people can and do change their religion, and that with some religious the very propagation of the religion amongst disbelievers is the basis of the religion, whereas the three things put in—colour, race and ethnic background—are things which people cannot choose in the first instance, and cannot by any action of their own change under any circumstances. On page four of the report Mr. Scollin said:

It is considered that "ethnic" covers "national", that so far as Canadian conditions are concerned the word "ethnic" covers the total ground that need be covered. This was the view taken. With regard to the word "religion" it was considered that since this is a matter which can be the subject of and changed by debate and discussion, even of a very vigorous and brutal form, religion as distinct from the other attributes ought not to be a test. The other tests, of colour, race or ethnic origin, are immutable, they are matters which cannot be changed by debate in any way, and the same is basically true of language.

He then goes on to cite the United Kingdom Race Relations Act. I think we then had a discussion on the dictionary and found that our dictionary said that "ethnic" meant non-Jewish.

**Mr. Garber:** It might be true that individuals change their religion, but if the religious group of, say, ten million people is attacked it is inconceivable that overnight those ten million would change their religion. First of all it is against their religion to change their religion, and if they are religious they would not do it. There is no example in history of a whole group, involving even hundreds of thousands, who have suddenly changed their religion. It is done on a gradual basis and an individual basis. Sometime in the ninth century there was a group enamoured of the Jewish religion who joined it, but it was only a small group and it was done as a result of long propaganda. If I may for a moment be hypothetical and not factual, if Jews are attacked on Sunday for going to the synagogue, it is inconceivable that on Monday they will all go to the bishop and change their religion.

**Mr. John A. Geller (Chairman of Canadian Jewish Congress Special Committee on Bill S-5):** We do not suggest that the discussion of

religion should in any way be a part of the subject-matter for the bill. The bill clearly does not make it a matter in which the law should intervene. We merely suggest that in identifying a group which is subject to attack, the identifiable tag of religion would be a useful one in the bill. In our submission this in no way interferes with the discussion of religious matters. One cannot attack a group which is identifiable on a religious basis on the standard grounds of non-religious attack. That is what we are saying.

**Mr. Saul Hayes, Q.C. (Executive Vice-President, Canadian Jewish Congress):** I should like to add a word there, if I may. We say in our brief that we did not go into the question of defining Jews, but the 1961 census shows that there were 250,000 Jews in Canada who identified themselves as members of the religious confession, but of these only 170,000 identified themselves as also members of a Jewish ethnic group. With considerable respect—and it is not just an idle phrase—in the opinion you have just read, Mr. Chairman, I think it is an error of definition to assume that the word “ethnic” covers the Jewish community. Moreover, during the passage of the United Kingdom Race Relations Act there was considerable discussion when the word “religion” was left out, and I think the same error was perpetrated. The bill was motivated, not to protect the Jewish community, but to protect the large influx of Asians and Negroes who had come to the United Kingdom. When the issue was debated it was felt that the word “ethnic” embraced everybody, that you must be a member of an ethnic group. In the case of the Jewish community it is not so, as revealed in the census.

I think the definition used in England was, by an ironic twist, the same one that you had, Mr. Chairman, and that is the Oxford Dictionary definition, whereas the American dictionaries, Webster's, the Universal, all give the more current definition, which is that “ethnic” is describing a racial group.

**The Chairman:** Or national.

**Mr. Hayes:** Or a national group. That would not fit the peculiarities of the Jewish community. This bill is not and never was meant to be a bill solely for the protection of the Jewish community. There might have been an application on the part of many communities to make it such, but in fact it was not. Therefore, in attempting to draft a bill we had to consider all groups.

While I have the floor, I would like to address myself to Senator Choquette, who made a very relevant point earlier about French Canadians. This is slightly metaphysical, because nobody really knows. It may be that if in the early part of this century, or after the First World War, there had been this type of bill, with all the protection of free speech which we think is included, which would have prevented attacks on French Canadians, perhaps the seeds of the present situation would not have sprouted to such a great extent, and I think it is possible to argue that giving more thought to this type of education, which would have been derived from the criminal law, might have created a different sociological atmosphere from the one we now see.

**Senator Carter:** I would like to make sure of one point. Mr. Herman gave a lot of evidence this morning, and exhibits, which referred to Jews in some respects as a religion, and in other respects as an ethnic group, because of the cartoons which emphasized the hooked nose and stuff like that.

If this bill were passed into law as it stands at the present time, and if this sort of things occurred in the future, such things as were illustrated this morning, would Jews have any protection? Would it afford any protection of the Jews as a group?

**Mr. Herman:** We think it would. In the first place, it would have the educational effect on the community, the community would know that it is contrary to public policy to defame a group as a group, or to incite disorder or incite to a breach of peace against that group.

In the second place, if they did defame this group, they could be punished for it, if, in accordance with the opinion of the jury, they are guilty of defaming that group. That punishment would occur in the same way as a man is punished for defaming an individual, as Senator Roebuck pointed out.

Therefore, both from an educational point of view—that is, creating the kind of public opinion that it is contrary to public policy to defame groups, which would prevent many people from doing so, repeating this sort of defamation; and from the checks and the reins that the law has, they certainly would be punished and likely would not do it a second time if they were punished once. Therefore, from both these points of view, we feel that this law would have a beneficial effect.

**Mr. Hayes:** I would like to add a few points to this discussion.

We were taught in our cultures that in the protection of the individual, group rights were not really part of the established background.

Over the last 35 years, the concept of rights of groups has become a dominant feature of western society. What we must do, in this electronic age is try to bridge that gap, that background particularly of those over the age of 50, that background in which we were brought up, in which there was protection only for individual rights. We have to look at the twentieth century, and in the western world particularly, where groups have protection and groups are demanding protection and groups make appeals for protection. This is a philosophy that I think is encompassing the whole western world.

In other levels, you got it, anyway. Again, to Senator Choquette, the French Canadian group and the cultural and linguistic groups are not asking for any individual rights, but they are asking for rights as a group.

Although this sounds dogmatic, it is a suggestion—that you must transfer that doctrine and that thinking of society now, to the groups, as society is composed of groups and one has to try to bridge that gap.

**Senator Choquette:** As far as the word “religion” is included in that, my friend Senator Roebuck will tell you that I spoke on the hate literature bill in the Senate and I was one of those who insisted, and still insist, that the word “religion” be put in there, as an identifiable group.

**Senator Roebuck:** And my answer to your suggestion was that we leave it to the discussion which is taking place today, and not try to define words and that sort of thing, in the general debate that was going on at that time. So we are under an obligation now to consider this question, whether we put “religion” back in the bill.

**Senator Carter:** I would like to follow up just one more of my original questions. I gather from Mr. Herman’s reply, that this bill would do some good, because it would create a climate where it would be educational and would create an atmosphere where at least these types of incidents would not occur. But the need of this bill, as I understand it, is given in the operating clause. In the case of a disturbance having occurred, what protection would you then have, as a group?

**Mr. Herman:** We have this protection, that the person or persons who created the disturbance would be punished, if on trial they were found to have created that disturbance. We have provisions in the Criminal Code against theft. That does not stop theft. The thefts do take place, but when they take place, whoever commits them is punished for that breach. So it serves two purposes, it punishes him and also discourages him from doing it again.

**The Chairman:** May I point out to Senator Carter that section 267B(1) creates an offence of communicating statements in a public place, inciting to hatred or contempt against an identifiable group, where such incitement is likely to lead to a breach of the peace.

But subsection (2) provides that everyone who by communicating statements, wilfully promotes hatred or contempt against a group. Now, there are two separate offences there and I think it is important that you should keep this in mind, in this discussion. One is the incitement, where it is intended to incite a breach of the peace. A legal breach of the peace is one offence. But the mere advocating or wilfully inciting hatred or contempt is a separate offence.

**Senator Carter:** My point was that in each case it must be against an identifiable group.

**The Chairman:** That is correct.

**Senator Carter:** And can this group identify itself under this particular legislation? That is the point.

**Mr. Geller:** To speak to that point we are concerned with, under the bill as drafted, the word “religion” is left out of the definition section dealing with identifiable groups. On account of that, the Jewish group as such, of the nature that Mr. Herman has pointed out, might not be caught. That is why we are respectfully suggesting to you, sirs, that the definition should be amplified to include that word, as originally suggested in the report of the Special Committee.

We are not able to say that the bill as drafted would not protect this group: we are concerned that it might not; and we feel that the possible difficulty could be removed at this stage.

**The Chairman:** May I ask a question, for clarification purposes, from these gentlemen who have given this a great deal of thought.

If we added the word "religion" today, this would still not preclude, in a particular set of circumstances, where the attack seemed to be more on an ethnic identification than a religion. There might then be the two prongs of a possible offence. It could be an offence of attacking people, either because of the religion identification or because of the ethnic identification? Am I correct?

**Mr. Geller:** With respect, sir, we feel exactly that, that the definition of identifiable group, although carefully made, so that an identifiable group is carefully definable in the section, it should be broadly defined, so that any attacks might then be prosecuted on one of the alternative bases of the definition—as you suggested, Mr. Chairman.

**The Chairman:** In other words, it would broaden it to cover areas which you feel might be used as escape routes.

**Mr. Geller:** That is so.

**Mr. Hayes:** There are a number of people of certain religions who are being defamed, because of their religion. Therefore it is important that the definition should cover this. There is a very interesting section of the law in this respect. When we suggested that there were a number of offences known to the criminal law—where their truth is no defence—it does not matter how truthful what you say is, if it is something about the royal family—in another period, perhaps the time of good Queen Victoria—even if what you might say may be something absolutely true, it could still be seditious libel and the truth of it would not exculpate. The same is true of some other offences. We should have added blasphemous libel as well. There is a possibility, although I cannot give an example, that a person might say something true but in blasphemous terms. But the truth of what he said would not exculpate him if it were said in blasphemous terms. The value of the concept in Bill S-5 is that it adds a protection which these other sections of the criminal law do not have. In the criminal law the truth is essentially a defence. If it is true, there is no conviction at all. Again, of course, another aspect of it is that if on reasonable grounds a person believes it to be true and in the public interest, that is also a good defence.

I think that section 246 of the Criminal Code should be read to the senators, since it deals with blasphemous libel. Of course, you

can read it for yourselves, but section 246(3) reads as follows:

No person shall be convicted of an offence under this section for expressing in good faith and in decent language, or attempting to establish by argument used in good faith and conveyed in decent language, an opinion upon a religious subject.

Now, that same theory is contained in Bill S-5. If you say something in good faith and in decent language, it cannot come within the hate propaganda definition at all. Therefore, this law would not prevent anybody from expressing his opinion as to the inadequacies of a certain religion itself, its deleterious effects and so on, so long as in expressing himself he did not do so in terms of spewing out hate deliberately and blasphemously. If he did not do so, it would be as perfectly permissible for him to discuss the topic as it would be for him to discuss the sex life of the amoeba or any other subject.

**Senator Laird:** What section were you referring to?

**Mr. Hayes:** Section 246, subsection (3).

**Senator Choquette:** Gentlemen, the word "genocide" has not been discussed in our deliberations yet.

**Senator Roebuck:** I have been thinking of bringing that up. Thank you for doing so.

**Senator Choquette:** Yes. I do not know how many of you gentlemen have read the speech delivered by Senator Salter Hayden when we were dealing with the bill in the Senate. His contention, in a few words, was to the effect that in our times, with our system of democracy as we have it now, it is absolutely useless to deal with or put into this bill the word "genocide," because, he says, even in Germany at the time of Hitler's rise and fall, had there been such a bill enacted in Germany, invoking the term genocide, the fact that a dictator had taken over would have offset that, and it would still have been possible for him to entice people to genocide and to actually execute people. So that, Senator Hayden says, in our system, even if we put that into our bill, it would be only in the event that a dictator might take over or that a new political system altogether might prevail in our country, that such a bill would have any meaning, but even so a new system could

make it valueless. So Senator Hayden thinks that the part in this bill dealing with genocide is absolutely useless.

**Mr. Geller:** Sir, with the greatest respect for the honourable senator, our point of view, one which we feel comes clearly out of the report of the special committee, is that there is no clear and present danger in this country of genocide, but that it is important in every country to prevent the preaching of genocide from being a permissible subject matter for promotion. Speaking personally, I do not feel that today genocide is a possibility in Canada. I do feel it important, however, that the Canadian people state that genocide is not something that they are willing to have urged or promoted in this country; that genocide or the advocacy of genocide is abhorrent to the Canadian people—not because we fear genocide but because this is one of the many areas of the dissemination of hatred which lead to a climate which, under certain circumstances, can lead to the rise of a Hitler; that hate literature in all its many ramifications is a danger because it is a breeding ground for such a climate and that, in a country such as ours—which is proud of its democratic tradition and has every reason to be proud of it—we should clearly state that this is not a subject matter which we are convinced is a matter for honest discussion. I am sorry, I should have said honest “advocacy”.

**Senator Roebuck:** This does not stop any discussion of genocide.

**Mr. Geller:** The honourable senator is quite right.

**The Chairman:** If we substituted the word “advocacy” for the word “discussion,” would that express your thought?

**Mr. Geller:** That expresses my thought better than I did.

**Mr. Garber:** Mr. Chairman, I want to give an example. Not long ago the late lamented Mr. Rockwell was interviewed on the C.B.C. and was asked certain questions as to what he stood for. He said, “I stand for the execution on the gallows of the Jews.” That was right here in Canada. Someone said to him, “Well, all the Jews?” Then he said, “No. I think I could spare 10 per cent of the Jews, because they are decent people.”

Now, advocacy of this kind does something to the listeners. It will not result in genocide, but it may result in the breach of the peace. That is the point.

**Mr. Herman:** I have some notes here of Mr. MacGuigan’s dealing with this argument of Senator Hayden’s. It seems to me that he must have completely misunderstood the distinction drawn by the legislation between the proscription of the advocacy of genocide and the proscription of genocide itself. While genocide in Canada may indeed be unthinkable because the majority of Canadians cannot be sold on it, nevertheless, the advocacy of genocide has actually had an effect, at least implicitly. Now, may I bring this home in this way: supposing someone were to advocate sterilization of all French Canadians. Just using that as an example, of course it would be unthinkable to all Canadians that anything like that should occur. But the very advocacy of the sterilization of French Canadians—or Jews, if it were said about Jews—it is the very advocacy, I think, which this act is designed to curtail.

Incidentally, genocide means doing harm as well as actually murdering or killing people. So it is the advocacy of the genocide and not just the genocide itself that is important.

**Senator Choquette:** Do you not think it becomes ridiculous, if you advocate something that is impossible to carry out? I gave you an example awhile ago. Every day we hear people who are dissatisfied with the demands of Quebec. They say, “Let us throw these Frenchmen, all of them, into the St. Lawrence River and get rid of them once for all.” Now, who is going to try to carry that out? That is advocating genocide of a group. So that I say, if it cannot be carried out—and just crackpots are making that kind of statement—then it cannot be taken seriously.

**Mr. Herman:** You can carry that argument out to the extent of *The Protocols of the Elders of Zion*, and so on. You can say that those things cannot be carried out, but unfortunately there are people who take them seriously or who say these things for malicious purposes. Unfortunately, there are victims who think that it can be carried out and they are entitled to be protected as well.

**Mr. Harris:** I should like to deal, Mr. Chairman, with this latter question. Obviously, sir, it is ridiculous and it cannot be carried out and it is not going to be carried out. It may have been advocated many times in Quebec by some people, and perhaps elsewhere in Canada, that French Canadians should be dropped in the St. Lawrence. But the issue, it seems to me, with respect, goes beyond that. It goes to this: that in 1925 or

perhaps early in 1930, when people knew what Hitler was advocating in Germany about the Jews, it was said, "It is nonsense. It is ridiculous. Who can wipe out a people? Who ever heard of such a thing? It cannot be done." No one would have thought that it could be done, but in the climate of Germany it became possible.

Now, the climate of Canada is different and there is not the slightest reason to think that the climate of Canada will ever resemble that of Germany. Nevertheless, we live in a generation where it happened, and we have with us today at least one person who survived the European holocaust. So that he knows that you can grow up in an atmosphere where you do not think it is possible for that to happen but then you see it happen. And the French Canadians, no matter how badly they have been denigrated and treated by many people in Canada, have never, happily, been the subject of an actual genocide, whereas we have seen in the world that these things can happen even in a highly civilized community.

Laws, I think, are not always passed only to take care of something that the people can envisage as happening in the present day or at the present moment. So we take care to legislate against the things we know can happen by virtue of human experience in certain cases. This is a case where it seems to me that nothing can be lost by prohibiting the advocacy or promotion of genocide, and God forbid that we should need it, but there might be something gained.

**The Chairman:** If I may be permitted to make one interjection here, I would like to draw to your attention a matter which I think gives us no great pride today. During the war and particularly after Pearl Harbor there was a wholesale transportation of people of Japanese ancestry from the west coast to camps in the interior of Canada. When we look at that situation today we wonder how we could have been so stupid. Yet we considered ourselves as good, reasonably decent people. Yet at that time there were people who even advocated that we should not bother feeding these people but that we should in fact get rid of them.

**Mr. Hayes:** This is reminiscent of what happened to the Acadians.

**Mr. Fred M. Catzman, O.C., Past Chairman, National Joint Community Relations Committee of the Canadian Jewish Congress and B'nai B'rith:** I think basically that while we

may not be dealing with a clear and present danger, as it were, that is so far as genocide is concerned, our experience has demonstrated that it is always useful and educational for the Government to declare as a matter of policy what the social conscience of the population subscribes to. It has been our experience that when the Government legislates and declares policy the average citizen, who is a decent, law-abiding citizen, goes along with that policy, and we find that it is a great deterrent to anyone who may feel that he is exercising a God-given right in taking some stand that might be crackpot. But if the law has spoken and if Government has declared a policy, the citizens by and large will adhere to the policy and refrain from advocating genocide and doing anything contrary to that policy. I say if this legislation were enacted we would be bitterly disappointed if we found it necessary to have to resort to the courts to enforce it. It would be our hope and expectation that the very enactment of such a law as a declaration of policy would have the salutary effect of making citizens aware that these are taboos they shouldn't engage in and generally the climate of opinion in the country would be elevated as a result of such legislation.

**Senator Roebuck:** Mr. Chairman, may I ask a practical question on this matter? One of the arguments that was put forward in the Senate was that this genocide section 267A was unnecessary because of the present sections of the Criminal Code. Now would one of the lawyers here answer this question for me? To what extent is the Criminal Code deficient to protect against the things that are prohibited in this proposed section?

**Mr. Hayes:** There are two points I would mention in connection with this. First of all in the Criminal Code in so far as it creates the crime of murder, murder is the substantive offence itself, but there is nothing in the Code which would now prevent the incitement or the advocacy to murder a group, or to advocate the disappearance of a group. There is also the fact that on the whole the corpus of the criminal law which is supposed to reflect the mores and moral code of the community has been framed over a long period of years on the basis of individual rights. That is why there is a defamatory libel which an individual can prosecute, but there is nothing of a group libel nature. The same is true of murder. There is an act which prohibits murder and, I daresay, conspiracy to murder—I am sure this would come within the four corners

of the law—but then you would have to identify the people against whom the conspiracy was directed. There is a complete lacuna in the law.

**Senator Lang:** Mr. Harris said that in enacting sections in connection with genocide there is nothing to lose. My instinctive reaction to that statement is that there is a lot to lose. The very fact that we in Canada would contemplate enacting such a section almost implies that we are fearful that such a state of mind is potentially in the Canadian people. In other words, my reaction to this is to regard the enacting of this law as a slur on the people of Canada because the contemplation of such things as this envisages is so utterly abhorrent and ridiculous. This is the way I would react to this particular part.

**Mr. Harris:** Let me point out that there has been advocacy of genocide in Canada and there was filed earlier a number of documents in the express terms of advocating genocide of Jews and I think, if I'm not mistaken, even Negroes in Canada by people resident in Toronto and London and in Flesherton, Ontario, and other places throughout Canada. So it is obvious that this kind of thing is being advocated. That it isn't liable to be carried out is something else. But when the advocacy takes place, I don't honestly think one can say it is a slur on the Canadian people to pass legislation designed to prevent such advocacy or promotion of such actions on the basis that this is something that has not taken place. As I have already indicated before, it is something that in our generation has in fact occurred; actual genocide has occurred in other places in the civilized world.

**Mr. Catzman:** May I further answer the honourable Senator Lang by putting it on this basis: that the advocacy of laws against genocide originates in the United Nations. And I think in Canada on a number of occasions we have enacted legislation to indicate that we subscribe to the principles of the United Nations without declaring that Canada has any problem necessarily in that regard. I think we are not demeaning Canadians or denigrating them in subscribing to a principle which has now gotten currency internationally and perhaps only by adopting this type of legislation and supporting the United Nations declaration we are putting ourselves on the side of that declaration and possibly spreading the effect in the first place of what is an international policy.

**Mr. Hayes:** I would also say there is no slavery in Canada and there is not likely to be, but the Canadian Government has subscribed to the international human rights covenant that there shall be none.

**Senator Roebuck:** It is already prohibited in our legislation.

**Senator Lang:** May I say that it is distinct in my own mind. The different connotation between subscribing to the Conventions of Geneva either by way of declaration in a Bill of Rights embodying such a principle—I would distinguish that in the terms of its implications from including such a thing in a Criminal Code which also deals with theft and rape and other such offences. To me the subscription to the ideals or the principles that would probably preclude genocide does not have quite the same connotation as it would have by its incorporation in the Criminal Code.

**Mr. Geller:** Honourable senators, may I respectfully suggest that the most effective way of subscribing to the international view that the advocacy of genocide is abhorrent is to enact legislation which gives effect to that abhorrence. May I respectfully suggest that as long as we in Canada say that we abhor the advocacy of genocide but we are not prepared to make that advocacy against the public policy of the country, then we have not effectively subscribed to international conventions on the matter, and this is my respectful suggestion.

**The Chairman:** It is my understanding that when we signed the convention which was deposited, it was part of the convention that the signatories to it agreed to pass appropriate legislation in their own countries. I think this is what Mr. Scollin told us, that section 267A was merely following through the obligation which we have had but have not carried out since our depositing of the documents with the United States in September, 1952, I think the date was.

Am I correct in assuming that as far as this legislation is concerned you have one suggestion to make, in particular, and that is that religion be added to "identifiable group"? And then there was another suggestion. I am not sure you put it as a positive recommendation, but you thought it was or might be quite agreeable that no prosecution should be laid under the section without the consent of the respective attorney general.

**Mr. Harris:** Those, in sum, are the two changes we might consider.

**Mr. Hayes:** You have made it look as if we spent an awful lot of time just to come to that conclusion, Mr. Chairman.

**The Chairman:** It was not my intention to do that.

Unless there are any more questions, I thank you very much for your presentation. And may I say this, while I was trying to boil down what we might do to the act, we fully appreciate the great deal of work you have put into this, to bring to us the presentation so that we will understand and be better able to understand the kind of thinking that has gone into this legislation and the reasons why we should be giving the kind of careful consideration we are to it.

**Mr. Herman:** For the assistance of the committee, the Convention on Genocide is found in the special committee report at page 289, so if any of you learned senators wish to refer to it, it is all set out there. It is headed:

United Nations Documents. Convention on the Prevention and Punishment of the Crime of Genocide. (Adopted by the General Assembly of the United Nations on 9 December 1948).

**Senator Roebuck:** Just before you go, I would like a little more consideration given to this thought of making a prosecution subject to the consent of the attorney general. It does not strike me as a practical measure at all. It is a police proposition; it must not get cold. It is another matter to say that some of the materials which may be seized later on shall be put in the charge of the attorney general. That is a continuing matter and subsequent to the excitement. But to delay a prosecution until application can be made to the attorney general, when somebody like Beattie gets up in a public place and disturbs the peace with outrageous statements such as he did actually make, that is not practicable. That is a matter for the police force.

**Mr. Garber:** I do not think we will insist on it.

**Senator Roebuck:** I would not go and mess up this situation.

**Mr. Geller:** We felt obliged to point out to the committee that Chief Justice Wells made this suggestion. On the other hand, we do not

feel in any way the bill would be defective unless Chief Justice Wells' suggestion were given effect to.

**Mr. Herman:** We also acknowledge that the learned Senator Roebuck is the only person here who has had experience as a former attorney general, and is more qualified to judge.

**Senator Roebuck:** That is a long time ago.

**The Chairman:** Are there any more questions? If not, may I thank you all very much for coming to us and offering us your assistance and doing the great deal of work, which obviously you have done, in order to assist us.

Our next witness is Dean Maxwell Cohen. I understand, Dean Cohen, that you have a presentation, and there are copies of this which are available to everyone. I suggest we follow the same procedure with Dean Cohen, that he make his presentation first, and then we can go into the question period afterwards. It gets the presentation on the record in an orderly way, and does not preclude debate at a later stage.

**Dean Maxwell Cohen, Faculty of Law, McGill University:** Mr. Chairman, thank you for the invitation to come and address this committee. I wanted to do so. I have studiously avoided making any public statements on this report ever since it was published. I have taken the position that the chairmen of special committees and royal commissions have a duty to keep silent once they have done their work, though there seems to be some dispute about this as a matter of policy. Nevertheless, I thought the first forum in which I would speak would be the forum of Parliament itself, and this is the first occasion I have had to have a public discussion of this matter, apart from a radio discussion of it shortly after the report was published. I am glad to have this opportunity to do so.

I would not like to begin my remarks without, through you, sir, felicitating your most senior member who, in a way, is one of the fathers of this kind of effort. Senator Roebuck should not, I think, forget that he has inspired a whole generation of thinking about the problems of the quality of life in Canada. I would like to go on record as taking part in the great pleasure we all have in the fact that he is now fit for joining the Faculty of Law at McGill University on a post-retirement appointment which we shall be glad to offer him.

**Senator Roebuck:** Thank you.

**Professor Cohen:** Perhaps it might be as well if I were to read these few pages.

**The Chairman:** Yes.

**Professor Cohen:** They are an attempt to summarize as briefly as I can the essence of the problems we face. We have done this quite objectively. I am not here as an advocate for the report in any partisan sense. I am here to explore with you the report, the reasons for it, and the extent to which those reasons justify or do not justify the kind of legislation that is before you.

I. Explanatory note: These remarks, Mr. Chairman, are concerned primarily with a brief explanation of the Report of the Special Committee on Hate Propaganda. They are not intended to do more than introduce the principal facts and conclusions underlying the Report.

II. General Remarks: The Report of the Special Committee on Hate Propaganda was first of all a unanimous report on the part of the seven members of the Committee, five of whom were persons with legal training, one a journalist, and one a distinguished social scientist and student of industrial relations, and of problems of civil liberties in general. Among the five members with legal training, there were those that had some personal research experience in criminal law studies while others were widely experienced in the problems of law and public policy in general. The Committee was aided by an Executive Assistant to the Chairman who was a professional criminal law student and practitioner at the Montreal Bar devoting himself almost exclusively to problems of criminal law.

The Report itself is quite clear about the reasons which moved the Committee to unanimity. These reasons may be summarized as follows:

1. We were satisfied that, on the facts, there was a very unpleasant and frequently threatening situation, particularly in Toronto and often elsewhere in the distribution of varieties of hate propaganda.

2. We were satisfied that the matter was not an "emergency" matter but it could become, under conditions of political or economic instability, a source of serious infection in the relations of Canadian citizens, members of different identifiable groups, to each other.

3. Members of the Jewish community were particularly vulnerable, for historical reasons well known to most sensitive, educated people, and certainly other minority groups were among groups identified in hate propaganda attacks and could be assumed to be equally sensitive to the situation.

4. The Committee came to the conclusion that psychological insights of the present generation made it impossible to ignore the effects of propaganda on inter-group relations. Recent events in Europe, and the dominant role of racist propaganda in poisoning much of the political life of central Europe and particularly that of pre-war and wartime Germany, were clearly related to the role of false and malicious information disseminated in such a form and with such frequency as to be persuasive enough to influence people already conditioned to varieties of prejudice. The major study prepared for the Committee by Professor Kauffman, to be found in Appendix 11 of the Report (the study in Appendix 11 is the basis for the analysis set out in Chapter IV of the Report), was a convincing document for the Committee both in its analysis of the literature as a whole and in its application of that modern research information and theory to situations such as the one exposed to the Committee through the information available to it about propaganda in Canada. In short, the Committee was satisfied that on the facts before it, and while there was no "crisis", there was clearly a very unpleasant, provocative, and potentially dangerous situation; that such danger lay in the capacity of propaganda to influence potentially prejudiced persons; and finally, that the democratic processes did not require any group to stand idly by and be vilified in the name of free speech when the effects of such vilification were, under our modern understanding of propaganda, likely to be much more severe than often was assumed two or three generations ago.

5. The Committee firmly believed that the theory and practice of free speech must be defended at every possible level but that free speech did not require that everything could be said about individuals or groups no matter how untrue, unfair, or malicious, particularly when what was said could in fact accentuate prejudice and stimulate antagonisms between groups. The Committee was satisfied that the theory and practice of our legal and constitutional system did not create for free speech a totally unlicensed status. For example, it was clear that already the law pro-

vided for restraints in the matter of libel and slander, blasphemy, seditious libel, false news, misrepresentation, and other reasonable standards. Therefore, there was nothing new about the theory of limits on speech or statements where the social judgment of the injury outweighed the social judgment of the benefits of the "freedom".

6. The Committee was satisfied that the present legal rules, both criminal and civil, did not guard against the kind of group vilification and group incitement in the hate propaganda activities with which it was concerned. Very detailed studies were prepared for it on the present state of the law in Canada, the United Kingdom, and the United States, and the following was made clear from these studies:

Canadian law did not take sufficient account of the new hate propaganda situation and did not provide for a means to deal with advocacy of genocide—I repeat "advocacy of genocide"—inciting to group hatred likely to lead to violence, or group libel or group defamation in general. None of these were adequately dealt with by existing Canadian law. In the United Kingdom the same situation more or less applied until the Race Relations Bill of 1965 which introduced quite severe restrictions on the ability of persons to vilify groups identifiable by race, creed, or colour. There the word "religion" was left out but now the government of the United Kingdom is being strongly pressed to re-introduce religious identification as well. In the United States the doctrine of freedom of speech has been given very high priority by the United States Constitution and Supreme Court judgments but even here a number of cases have explored the limits which lead to the vilification of any particular, identifiable group. The Committee's legal study was prepared by one of its members, Professor (now Dean) Mark R. MacGuigan and is set out in full in Appendix I. The study became the basis of Chapter IV of the report.

The committee was also impressed with the fact that hate legislation had been enacted in Australia, Austria, Denmark, West Germany, France, Greece, India, Italy, The Netherlands, Norway, Sweden, and Switzerland—and probably since that time, because the report was written three years ago, by a number of other states as well. Equally important was the impact on anti-discrimination provisions in several United Nations resolutions and conventions dealing with this

and other aspects of human rights—particularly, the United Nations resolution of 1965 which became the International Convention on the Elimination of All Forms of Racial Discrimination, of which Canada is now a signatory and the draft document of which is to be found on page 303 of the Report. Since that resolution was adopted by the General Assembly in December 1965 and has become a final treaty, it has been signed by a very large number of states as of December 1967. These signatures now number fifty-eight, twelve of which have ratified it. Canada is one of the signatories.

III. The Proposed Bill: The proposed bill in the committee's report and that before the Senate at this time are almost identical. They differ, on the substantive side, only in the omission from the definition of identifiable group of the words "language", "religion" and "national origin". The committee's definition of "identifiable group" is "any section of the public distinguished by religion, colour, race, language, ethnic or national origin," whereas the definition in the bill before this committee is "any section of the public distinguished by colour, race or ethnic origin". There are certain procedural differences but otherwise the language, structurally and substantively, is the same as that proposed by the committee. I believe the bill to be a proper balance between an extension of existing concepts of reasonable limitations upon vicious and malicious use of speech and symbols, and the full freedom to engage in vigorous debate that is of the essence of a free society. But debate does not require for its safeguarding the protection of distortion and lies about groups that then poison the sense of unity of a democratic society.

The Committee believed that there is no justification whatever for advocating genocide—again, I point out that the phrase used is "advocacy and promotion of genocide"—there is no justification for incitement to hatred against a group which could lead to violence; and there is no justification for group libel where the substance of the information is not true or where there is no reasonable ground for believing in its truth and it is not in the public interest. In short, the defences in the bill are sufficiently severe to safeguard all of the basic needs of free speech. Indeed, it may be argued that the bill is too weak and should be strengthened.

Finally, there is the safeguard that no prosecutions can take place without the

approval of the attorney general, itself a barrier to any possible abuse of the proposed legislation.

I am sorry, but I was wrong there. I misread the passage, and it is that no orders for the seizures of material can take place without the approval of the attorney general, and I shall have a few words to say about the approval of the Attorney General for Canada. To that extent, I wish to amend that paragraph.

IV. Conclusions: I am satisfied that the bill represents a desirable step forward for the protection of groups in a multi-ethnic, multi-religious society that characterizes the Canadian mosaic. But that mosaic needs to be nurtured in common understanding and not exposed to the destructive forces of words or signs that bring into hatred or contempt any identifiable group of Canadians.

Mr. Chairman, that is my statement.

**The Chairman:** Are there any questions?

**Senator Carter:** Perhaps Dean Cohen should continue, and complete his whole presentation, after which we can ask him questions.

**Dean Cohen:** This shows how professors make mistakes. I took a good look at the bill, and I thought that the draughtsman had adopted what the report suggested. Mr. Hayes referred to it in his remarks a while ago. There was a reference in the report that the legislature might perhaps wish to include the permission of the attorney general as a basis of prosecution. I was very interested to hear Senator Roebuck's comments on that.

Let me address myself for a moment to that question, just to wind up the story. I really am not very dogmatic on this issue. When we put that in we were faced in the committee with a very serious effort to draw a proper intellectual and practical balance between legislation of this kind and that involving some very high standard of free speech and civil liberties, and it was therefore not unnatural for us to look for additional ways to satisfy public opinion that there would be no abuse of this legislation. It was put in as a suggestion, not in our bill but merely in a paragraph towards the end of the report, that perhaps the Government ought to consider the role of the attorney general preceding the laying of the information or the prosecution of a case.

I would be bound by the views of more experienced people in these matters when it comes to the day-to-day administration of criminal justice. I can see strong arguments both ways. Senator Roebuck's argument is very persuasive, that you must have a day to day operation of the law and you cannot wait for the attorney general to give a decision each time; that it will not do much for the administration of the law to have this kind of rule, and perhaps it will be a handicap. The other side of the picture may be more persuasive in the long run, with due respect to the former Attorney General of Ontario. It may very well be that the very debate honourable senators are having about this bill shows their anxiety, demonstrates the caution with which some honourable senators are approaching it. It may be that for the purposes of resolving that sense of caution which has led them, I think perhaps unduly, to fear the consequences of this bill, the role of the attorney general in this way could be an additional insurance policy. A year, or two, or three, would demonstrate whether this was practical or not.

From the point of view of the administration of the legislation, I think it would not matter very much, on the ultimate impact of the legislation on the public, whether the attorney general had in fact to give his permission or not. But it might help those who worry about the legislation a great deal to see this additional hurdle before a prosecution could take place. As I say, I am not dogmatic one way or the other.

**Mr. Garber:** It tends to make the attorney general judge and jury.

**The Chairman:** He is anyway.

**Dean Cohen:** There is this point that Mr. Garber has just raised. On the other hand, in the last analysis the crown attorney decides whether to proceed or not in any matter, except for the laying of private information, so in a way we are already in the hands of the decision of the law officers of the Crown whether to proceed or not. As I say, I am not insisting, nor was the report dogmatic on the issue at all.

**Senator Choquette:** How would that alter the bill? As I understand it the bill now calls for an affidavit being produced before a county judge and satisfying the judge that certain literature on sale at the corner store is anti

this and anti that, and propagates or advocates violence of some sort against a group. Would we do away with that?

**Dean Cohen:** If you look at the proposed section 267C of the bill, subsections (4) and (5) must be related to subsection (7). One sees there that the notion of having an order to forfeit or seize the material is related to subsection (7) which requires approval of the attorney general before an order is made. You therefore retain that but add to it that before a prosecution is laid it would have to be laid with the permission of the attorney general.

**The Chairman:** I am not sure what the practice is in Ontario and Quebec, but in Alberta we do not have the grand jury system of preliminary indictments; indictments are all preferred by the attorney general. An information can be laid before a magistrate who before granting the information is supposed to satisfy himself that there are reasonable grounds. If you were to proceed summarily here it would be by the police to a magistrate and then into the magistrate's court. In Alberta all prosecutions are undertaken in those cases by the agent of the attorney general, and the attorney general at all times has at his disposal the right to put in a stay of proceedings. If one proceeds by indictment, there is a preliminary hearing before a magistrate and at the end of the preliminary hearing the magistrate decides whether there is sufficient evidence to commit, but whether the indictment is proceeded with from thereon is again within the discretion of the attorney general.

There have been cases where that procedure has been followed, people have been committed and the attorney general has put in a stay on the proceedings. There is a recent case in which a person went before a magistrate and said, "These are the people I would like to examine to show you that I have a reasonable case"; the magistrate proceeded to sign the subpoenas to bring the witnesses to court, but at that stage the attorney general said, "This is a vexatious, frivolous proceeding", and he stayed the proceedings. This is the procedure in Alberta.

**Senator Roebuck:** It is very much the same here.

**The Chairman:** I would presume so.

**Senator Roebuck:** The attorney general can always issue a stay of proceedings. You will notice here that if you make the prosecution subject to his consent in advance—

**The Chairman:** Prior consent.

**Senator Roebuck:** Yes prior, prior to action by the police, when somebody is advocating a riot, according to section 267B the police could not arrest him, they would have to wait until they found the attorney general somewhere and got his signature before they could start.

**Dean Cohen:** With due respect, I think that is an extreme view of the role of language such as might be in the statute. The laying of a prosecution *per se* surely does not by any means interfere with the position of a police constable who in good faith, believing an offence has been or is about to be committed, proceeds to act. Surely the police constable could act without having to acquaint the attorney general's office and get permission. What would operate here is only the process of prosecution *per se* and I do not see it impeding the normal administration of justice by a police constable within his own limits of jurisdiction.

**The Chairman:** Could he not lay himself open to a charge of false arrest?

**Senator Roebuck:** Of course he could.

**Dean Cohen:** If he is wrong.

**Senator Roebuck:** Not only that, but he would not act if he knew a prosecution had to be preceded by the consent of the attorney general. You would just nullify the whole thing if you do that.

**Dean Cohen:** I am not pressing for it. I want to make my position perfectly clear. I am not an advocate of it. I also want to make it clear that it was to forestall any undue concern by the Canadian community, to show that this was legislation that had to be carefully observed.

**Senator Roebuck:** It was an excess of caution.

**Senator Choquette:** What is your opinion, Mr. Cohen, on the inclusion of the word "religion" in this bill? I know your committee recommended that and then for some reason unknown to me it was left out. I promised to put up a terrific fight to have it included. What is your opinion?

**Dean Cohen:** I entirely support the recommendation to include the word "religion" in the definition. I had the privilege of hearing, in part, the Canadian Jewish Congress presentation this morning, and I think the reason

they gave was a very cogent one. I think it quite unrealistic to suggest, as someone did, that while you may be born with a colour which you cannot throw off, you cannot always change your religion.

The real truth is that we are talking about groups. Group life has as much inertia about it, in religious terms, as it has in any other terms. One does not think of groups forsaking the whole religious identification with any degree of, say, voluntariness, as a real of social fact. It does not happen that way. But identification happens that way. The real source of the trouble is in identification, not in removal of identification, of particular groups. If one is speaking about legislation for identifiable groups, then there are groups which may be identifiable in religious terms, and the Jewish group is one of those which, for historical reasons, has mixed sociological attributes. There is its ethnic tradition, its religious tradition—as the Congress brief points out, (they are authorities in these matters and I am only a layman)—but I would assume that the most profound stream of identification of all is the original religious stream of identification, even though the association with religion by individual members of the Jewish community may be nominal. The historical impetus, the historical pattern, the fund of ideas, tends to be an original religious fund and these are the bases of the original historical patterns, which really have defined the story of Jews, as a particular segment of the human community, for the last two thousand years.

**The Chairman:** May I say at this point that I hope everyone realizes that, when I explained why religion had been left out, I was not expressing a personal opinion.

**Hon. Senators:** That is so.

**The Chairman:** I was merely passing on the explanation given to me by the people who drew the bill.

**Senator Choquette:** Which we agree is lame.

**Dean Cohen:** I think it would increase my sense of confidence in the correctness of the legislation if the word "religion" were restored. There was a grave sense of disquiet in the United Kingdom when that word was left out. There is no doubt that the pressure to return the word "religion" to the definition there is very strong indeed, and for a very good reason, for without the word it does not cover the problem.

**Mr. Hopkins:** Do they not use the word "creed"?

**Dean Cohen:** Yes. The suggestion was made that they had "creed", "colour", "national origin". They have kept "national origin" in the United Kingdom, and I notice that in our bill we had three things left out—language, national origin, and religion.

You have not asked me, sir, what I think of the other two.

**The Chairman:** I was about to ask you that.

**Dean Cohen:** The argument we had in committee was a very severe one over the question of language. In the peculiar Canadian context "ethnic groups" in this country have a rather significant political role at the moment. When one thinks of the French- and the English-speaking dialogue, what would these do if you had the definition "language"? What would it do to the classic Canadian debate between the French- and the English-speaking Canadians?

**The Chairman:** It may keep it in polite language.

**Dean Cohen:** We had two very distinguished members of the committee, the Honourable Mr. Trudeau and the Rev. Abbé Dion, and they are signatories to this report. They had no difficulty in coming to the conclusion that the definition would be better with these phrases in there. So that, to use the chairman's quite proper observation, it would get rid of some of the older inclination to be rougher than a decent democratic society really should tolerate—in the story of attacks that language groups have made on each other at one time or another in the life of Canada.

I would, however, say, in all frankness, that if I took a priority of the things that are important in this definition, I would say that, in worrying about these three phrases left out—national origin, language, religion—by far the most important one to put back in would be "religion".

The other two—"national origin" and "language"—do not have quite the role to play in protecting really vulnerable segments of the community that "religion" does.

Religion really protects some of the very vulnerable minorities. To be very blunt about it, such a large part of the Jewish community self-image is a religious self-image, that you can hardly have this legislation bear on them without the word "religion" in the definition.

**The Chairman:** Would you think that the word "ethnic" in its general use in Canada today would be broad enough to include "language" and identification by reason of language or by reason of national origin—the Oxford Dictionary to the contrary?

**Dean Cohen:** This would be a hard question to answer.

**The Chairman:** It is a slang word, really.

**Dean Cohen:** I think we use many important words very loosely. They sometimes have very great significance for persons about whom they are used. For example, look at the way in which we talk about "ethnic groups" in Canada? That phrase now has a specific political meaning. Anyone who is a candidate will recognize that, when he goes to Western Canada, or to Toronto, that he has to be respectful of what are now called the "ethnic groups" which mean to him the great group of Canadians whose mother tongue may be German, Swedish or Finnish or Ukrainian, and they identify themselves as ethnic groups.

Less felicitous words such as "New Canadians" are sometimes used, but it is becoming a far less acceptable phrase.

**The Chairman:** This was brought into the language really as a euphemism for some of the other phrases that were not acceptable.

**Dean Cohen:** That is right. My personal opinion is that that word "ethnic" is not subtle enough, not variable enough, and has become too political really to cover things which the word "religion" would cover. Whether it would cover language and national origin—which is the second part of the question—I would like to think about it a little more carefully.

My initial reaction is that particular nuances we had in mind in the definition, and which made us use the words "language" and "national origin" as part of the definition, were not adequately covered by the word "ethnic", which may leave a number of meanings not covered.

**Mr. Garber:** I suggest that in fact people change language much faster, in talking about groups, than they change their religion. All minorities that come to this continent change language within two generations. I spoke Yiddish when I came here, and still do, but very

few of my classmates know a word of Yiddish or understand it. And that is true of most minorities.

**Senator Roebuck:** It seems to me perfectly obvious that the word "ethnic" does not cover Jewish. I can imagine myself defending in an action and asking a witness: "You are one of those people in this group, are you; where did you come from?" And he says, "I came from Germany." However, the next person in the box is asked where he came from and says "I came from an Arab country." I would say "You are semitic". It would soon be said, "What kind of group is this, anyway?"

**Dean Cohen:** Quite, quite.

**Senator Roebuck:** Then I could get a Finnish person. For instance a person who does not belong to any of these groups might be the next witness. I can upset your "groups" so completely, with about three or four witnesses.

**Dean Cohen:** It was just for that reason, Mr. Chairman, that in looking at the peculiar historical sociology of the Jews, you had to have individual words to cover the situation, that a sensible judge or sensible interpreter could say it covered. It was not covered adequately without "religion", but this word would help to cover it adequately.

**Senator Roebuck:** I agree with you.

**The Chairman:** Senator Bourque, have you any questions?

**Senator Bourque:** I listened very carefully.

**The Chairman:** I noticed that. That is why I wanted to know if you had some question, Senator Lang?

**Senator Lang:** Not really. I would like to have from the Dean some of his philosophical background that leads to this legislation. This legislation as a whole disturbs me on a philosophical basis. I am fearful, as it seems to me at first blush that it is not legislation that fits my idea of the Canadian idiom. It is legislation that tends to accentuate the mosaic as opposed to the form of Canadianism, and basically it is legislation that, in my opinion, we do not need.

**Senator Carter:** Hear, hear.

**Senator Lang:** When I say we do not need it, it is because I am eternally optimistic. I believe there is a spirit of Canadianism that precludes the fruition of the fears which are

implicit in this form of legislation, and conversely my fear is that the enactment of such legislation, rather than diminishing what potential threat there may be here, tends to accentuate it and focus it. In that general, broad line of thinking, I would like to have your reaction.

**Mr. Cohen:** I think that is the fundamental question, Mr. Chairman. I would like to address myself very informally but very seriously to that question.

I do not know, Mr. Chairman, whether this is the kind of thing you want to launch into before lunch.

**The Chairman:** Well, I am just wondering. It is 12.30 now.

**Mr. Cohen:** No teacher can speak for less than 55 minutes, as you know.

**The Chairman:** Would you like to come back at 2.30? That means that we do not get rushed too badly and it means we do not have to cut off what might perhaps be the most important part of the testimony this morning.

**Senator Roebuck:** Let us go on until 1 o'clock. I cannot come back at 2.

**Senator Lang:** I have to go to a briefing session at a quarter to one.

**The Chairman:** What shall we do, then? Perhaps we should let the senators have the benefit of what you can tell us, sir, until one o'clock.

**Mr. Cohen:** Let me begin, then, by replying to Senator Lang by way of an exploration, very briefly, of what is implicit in his anxiety. He is worried that the adoption of this kind of legislation does not fit in with the philosophical and political and social syntax of our own traditions.

**Senator Lang:** That is it.

**Mr. Cohen:** Therefore, it really distorts the answer and does not give an answer. And so, it really requires me to explore with you whether this is literally true. Is it philosophically true that this kind of effort is alien to our traditions? Is it technically true that we—in the report—have not done it well so that it does not fit the traditions?

Let us look first at the philosophic answer and then at the technical answer.

On the philosophical side, I venture to say that the whole history of western law is a

constant search for balances between competing values. One has only to remember, really, how recent is the successful realization of some of these values, and how limited in some form they were, those that are implicit in Senator Lang's question—the values of free speech. One may argue that up to about 1825 or 1840, until the liquidation, say, of the remnants of the eighteenth century, the real battle in English law, and, therefore, in English political and social thought, was how to permit the exercise of the maximum freedom against restraints which, up to 1688 seemed a kind of absolute sovereignty and what was from 1688 to 1800 decreasingly absolute.

After all, "constitutional government," even in the United States, in the sense we take for granted today is barely 125 to 170 years old. So that the achievements of the civil liberties we talk about is not really as profoundly ancient as one assumes.

Secondly, one has to remember that they were achieved under very special conditions. By 1850 most of the battle had been won against the supremacy of the royal prerogative, whether it had to do with free debates in parliament or the capacity to arrest arbitrarily or with an immense variety of reserve powers which the Crown in theory had certainly until 1688, (though of course the Star Chamber had gone).

If you think of all the problems of civil liberties as they emerged by the time John Stuart Mill was writing, it was not really until just before his day that one began to see the real disappearance of the effects of the sixteenth, seventeenth and eighteenth centuries on English criminal law and English constitutional law. So, when we talk about the classical Canadian idiom as being part of the classical English idiom, it is a very recently won battle of only 150 or 175 years. When you say it is recently won, you must add that even its present content was never an absolute content.

Let me put it in the following terms: at the very height of laissez faire ideas, at the very height of personal freedom theories, at the very height of Herbert Spencer's social philosophy in the third or fourth quarter of the nineteenth century, you cannot argue even then that free speech was absolute. I suppose the most absolute expression of freedom in society, in terms of speech is, for example, Article I of the United States Bill of Rights.

Nowhere in the English-speaking world is the statement about freedom of speech so determined as in Article I of the United States Constitution. Indeed, the Supreme Court of the United States has given it the highest possible priority. If one were to take that as an illustration, Senator Lang, of how far in the Anglo-American, Anglo Commonwealth world, the idea of free speech has gone, as to the central part of your question, for example, you would find limits even in the United States—where the Bill of Rights is enshrined in it in a way that no English document and no Canadian document has done, where you have almost a touch of absolutist rights in Article I, and Mr. Justice Black has said so.

This is an absolute right, he said the right of free speech. What do you find the Supreme Court of the United States doing? In the *Beauharnais v. Illinois* case which our Report discusses, the Supreme Court of the United States had no trouble saying that there is a point beyond which you cannot go in dealing with your neighbour. In that case vilification of a Negro group in Chicago was found improper under Illinois law and that law was deemed to be constitutional. There was no problem on the part of the majority of the court, speaking through someone as conservative as Mr. Justice Frankfurter, in finding that there were limits, to the extent to which a person could go within the framework of free speech to vilify a group of fellow citizens.

This can take place in the society which has by far the most sophisticated approach to the role of law in the control of behaviour or the role of law in the control of governmental activity, which is the United States. By far the most elaborate effort to control legislative executive behaviour in the modern world exists, in my mind, under United States law, constitutional theory and practice. If the Supreme Court of the United States, despite its refusal to put any restraints upon free speech in theory, finds it quite possible to say, "Yes, we give free speech the highest possible role because in the Anglo American tradition it must be given this role, and we have given it this place in our constitution, but despite that fact we say that there are limits beyond which you cannot go, and group vilification may be one of those limits, and it is not unconstitutional in the State of Illinois to say something about it in an appropriate statute,"

then I put it to you that it is not alien to our own traditions, for the Canadian people to do something ourselves.

These hard won civil liberties are only 150 years old. They were never absolute in the first instance, and they are not absolute even in the most sophisticated English-speaking country in the world, where the idea of free speech has been advanced to the point—far beyond the statements of law that exist in Canada, the United Kingdom or Australia—where their highest tribunal says, "You can go thus far but no further", in order to make group life viable in modern society. That is my first general answer.

My second answer is on a less juridical and more psychological level. When John Stuart Mill was writing in the 1850s and 60s the idea prevailed that debate in the market place of ideas freely engaged in, would result in "truth" and the understanding of truth. Distinguishing between what is false and what is true was really part of the general mystique that, given the educational levels on a rising standard in the community, and given freedom of speech you would at the end of the day have the best of all possible types of social systems because what was true eventually would come out in free debate.

This is really based in turn upon a deeper premise. The premise was on the nature of human belief, human thought and human response to facts and so on. Put it this way: what John Stuart Mill said about free debate was really a reflection of his then state of knowledge about the nature of belief, psychology, prejudice, persuasion, formation of opinions. The state of public knowledge about the human mind and its persuasion in the 1860s underlay a large part of the political and legal analyses he made. One cannot divorce his general political-legal analysis from the social data that pervaded his environment and from which he drew much of the juices of his thought. That being so, what did they know in the 1860s that was relevant to the situation we face today? Or, to put it conversely, Senator Lang, do we in the 1960s have a deeper awareness, as to how groups form opinions, as to what it is that causes misunderstanding, prejudice and hatred, than we had in the 1860s? I put it to you, sir, that there is undoubtedly a degree of knowledge and understanding and insight today that there was not 100 years ago.

Put aside the superficial remarks made often about the effects of "advertising". That

is only on one level, but we know from everything else, from brainwashing and from the nature of the study of prejudice itself, we know of the immense number of influence on people behaving in groups; and the whole field of modern and social psychology is filled with literature which tells us something about the danger to the human psyche, the danger when it is prodded, and the latent beast in us all. The idea of the perfectibility of man was good Protestant doctrine in 1860, but is it good Protestant doctrine today? Who really denies today some concept of original sin in view of what happened in our own lifetime? Our whole attitude towards what is now the human condition and what makes man behave as he does has changed completely. We no longer have the illusions of John Stuart Mill, those illusions which made him write as he did. Maybe it is just as well. Look at the debate we are having here today in the context of our new knowledge of the situation, of man's behaviour in the group situation, and which is often so pleasant within the group situation and so antagonistic outside the group. This is our current knowledge. So the second thing I would say is that the general philosophical argument about free speech must now be related to the social argument about the nature of community life and group psychology.

Marshall McLuhan may not be everybody's cup of tea. But he was a classmate of mine and he has brought us richly in touch with the impact of all the media of communication, either consciously or unconsciously. This is quite apart from the thinking of all the sociologists who worked in the field before McLuhan. I say one cannot be indifferent with your insight and my insight, in 1968, to the human condition and the capacity of man for evil behaviour and his ability to acquire prejudices. I would say that not to see this effort in that context is really not to see what our committee tried to spell out.

My third and final point which we, at least in this bill, tried to relate to the grand tradition to which you refer, and taking into account our new psychological knowledge, is that we are doing no damage to that tradition to which you and I belong and which we share as part of the Anglo-Canadian tradition. I propose to go through this to demonstrate that every one of the substantive positions we take in the Report are within the classical Anglo-Canadian tradition. If I can demon-

strate to you that it is not against that tradition you may agree with me that the bill is technically viable and can fit into the stream of the syntax I have been talking about.

**The Chairman:** It is now a quarter to one. I think we should adjourn until 2.30.

The committee adjourned until 2.30 p.m.

Upon resuming at 2.30 p.m.

**The Chairman:** Gentlemen, we have a quorum.

At the time we adjourned for lunch Dean Cohen was dealing with the question of whether the legislation was really necessary, or whether by passing legislation like this we perhaps belittle Canada by the implication that we needed this kind of legislation.

**Senator Roebuck:** I think that he had dealt with that. He was giving us the philosophical basis.

**The Chairman:** Yes, he was dealing with the philosophical basis.

**Dean Cohen:** I wonder if I might say a word on the particular point which I think Senator Lang really had in mind, namely: Does this demean the Canadian self-image by having to pass this kind of law? The answer, surely, is: No. Any society that is intelligent about its self-image, fashions whatever realities are brought to its attention by those facts which it can respect. You have facts of 1968 you did not have in 1955, or 1935, or 1905. You therefore tailor your understanding of the situation on the basis of these new facts.

Senator Lang, I am dealing with one crucial part of your question: How far one's own image of Canada is distorted by this kind of legislation. I have said that on the contrary, far from distorting it, it reflects positively on the mental health of Canada that it can honestly look at human problems and fashion regulations to deal with difficult matters in a realistic and honest way. When you know something about your own society and about human behaviour in 1968 which you did not know in 1908 or 1858, you should be able to tailor your legal and social machinery accordingly. Is it a distortion of our self-image to have passed legislation dealing with discrimination in employment? Is it a distortion of our self-image to have passed legislation dealing with discrimination in housing; or to have eliminated our rather vicious anti-Asiatic provisions of the immigration laws? On the

contrary, the more we know and the more understanding we have, the more progressive insights our legislation should reflect.

The intelligent question to ask then is not, "Are we distorting the traditions of Canada by this kind of legislation?" but, rather, "How far does this kind of legislation purport to meet a really objective problem and does it meet it intelligently?"

**Senator Roebuck:** What would be the difference between this and any other section of the Criminal Code, in the matter of distortion?

**Dean Cohen:** In fairness to Senator Lang's position on this, if I may take a leaf from your views, Senator Lang, I would say the difference is the closeness this particular kind of issue has to the bone of classical freedoms. Is it close enough to the bone of classical freedoms, on the surface, to make a man say: Having fought from the 13th century to the 19th century to get rid of the executive intrusion on the right of a man to speak, are we going to restore this without debate on it? I can see a person might ask the question, but in considering the question one must bear in mind that there may be new facts that give rise to new interventions of law in a particular area which heretofore might not have been necessary.

This brings me to the technical nub of the question, that there is really no part of this bill that is alien to the Anglo-Canadian tradition of law, either in technique or spirit or what will inevitably become the method of administration.

I think I can demonstrate that in this way. Take, for example, the three classes of offences here. There is the first one dealing with the advocacy or promotion of genocide; the second one dealing with the incitement of hatred on the part of one group against another, likely to lead to a breach of the peace; and the third type of offence is the group defamation one, which has a high degree of novelty on some levels, but none at all on other levels.

Let us look at each one in turn and see how far, in the technique employed and in the spirit of the legislation, it is or is not within the Canadian tradition.

Every one who advocates or promotes genocide is guilty of an indictable offence and is liable to imprisonment for five years.

Notice, Mr. Chairman, we are dealing here with advocacy and promotion; we are not dealing with the offence of genocide, *per se*. The report makes abundantly clear that when someone gets up and shouts, "Let's kill all the Eskimoes" or, "all the Jews. Let's put all Jewish communists in gas chambers" or, "all the Jehovah's Witnesses in gas chambers"...

**Senator Roebuck:** Who was it suggested that we hang all the lawyers?

**The Chairman:** Let us not start a popular movement here!

**Dean Cohen:** Yes, this goes back a long way—to Henry IV, I think. So, we are talking here about where you think the classical Canadian tradition of free speech and political debate goes; does it go as far as one group of citizens saying about another group, "You ought to be dead, and I advocate that you be exterminated"? Here we are making a statement which is not part of the realm of legitimate public debate. There is no rational defence a Canadian could make to saying, "I need the right to be able to say you and your group shall die, in the best interests of Canada." It seems to me, on the contrary, a self-evident proposition of the democratic process that there is no such right.

Let me put it in terms that perhaps Senator Lang would like me to use. The democratic process is really an ethical process. The democratic choice that men shall live by voluntary association and be given the power to choose who shall govern them in voluntary ways, subsumes a sense of community and subsumes the giving or transferring or use of power with certain ethical underpinnings. And this really means that we share, as a community, a certain set of values in which the role of power is not abused, and the transfer of power is effected within certain understood, regulated ways, and that society operates with a reciprocal or mutual sense of what is fair, and that there must be an overriding standard of equity. Indeed, if the Judaic-Christian tradition of regard for the individual is one to be respected, it is embodied in "One man, one vote."

It is that ethic which makes it totally untenable that you do talk of exterminating that other person or group to which he belongs. So, there is no rational political, social or ethical defence in a democratic society which would justify it as part of ordinary rough-and-tumble debate.

I therefore say that if one could be satisfied that the Canadian Criminal Code already prevented the advocacy or promotion of genocide, you would not have needed this, assuming one had laws that covered this problem. But the closest you get to it are provisions in respect of counselling murder and conspiracy respecting murder. However, there we are talking about counselling and conspiracy with respect to a given individual. He has recourse under the law, under either the civil law or the criminal law, as the case may be. But no group has recourse under our Criminal Code in those provisions; they are not designed for that purpose and cannot be interpreted that way. Even creative judges who are able to interpret language often far beyond the intention of Parliament, could not possibly convert the existing language of the Criminal Code to cover the advocacy of group genocide, which is exactly what we are talking about here, the genocide of an identifiable group.

Again, I would emphasize we are talking not of the crime of genocide, but of the crime to advocate or promote it, the refusal to accept as part of the legitimate rules of the game that you have the right to vilify your neighbour to the point of saying that he and his group should be in gas chambers. That does not add to our dignity. It does not add to our pride. It is no part of the Canadian tradition.

In fact, the reverse is true. Is it right for Canadians to say: "You and your group should be in the gas chambers"? To say that it is, means we are very sick. It is a sign of health to say: "This is no part of legitimate freedom of speech. Therefore, we are going to rule out the advocacy of genocide."

So, I would say that quite apart from being outside of the concept of civil liberties in the Canadian tradition, advocacy of genocide should be outside the rights under Canadian law, as we know it.

**Senator Choquette:** Professor Cohen, may we come to your opinion as to the need for such a bill?

**Dean Cohen:** Yes, and I am going through it, provision by provision.

**Senator Choquette:** Yes, but are you aware of a letter that appeared in the *Montreal Gazette* on November 23, 1967 by a person by the name of H. V. Wells. He wrote to the attorneys general of nine provinces about this

matter, and received answers from them. I will read one or two, but I can tell you that they are all similar.

**Dean Cohen:** Yes.

**Senator Choquette:** Some of the replies he received were as follows:

Edmonton, Alberta, January 26, 1965.

... I have no knowledge of the distribution in this province of "racist" pamphlets as described in your letter.

Regina, Saskatchewan, January 19, 1965.

... I have not received any reports with respect to the distribution of such pamphlets in this province.

Toronto, Ontario, January 15, 1965

... I am aware of no acts of violence attributable to the dissemination of the pamphlets to which you refer. . .

W. C. Bowman,  
Director of Public Prosecutions.

There is a whole page of this giving the question that was asked of the attorneys general of nine provinces, and their answers. I have read three of them, and I can tell you that all of them are similar to the ones I have read.

It was concluded from this that if the attorneys general of nine provinces answered in this fashion then there was no need for such a bill as this, and the people were not up in arms about it.

I do not know whether you have read all the letters that have been sent to the members of this committee—and I might say that they were not sent by crackpots. I am setting aside the people who are sending us anti-semitic literature, and the Babylonian Zionists, or whatever they call themselves. I am not concerned with those. I am concerned with citizens who have at heart freedom of speech in this country, and who are very much concerned about such a bill.

Now, having placed these premises before you I am asking you, as one who has made a special study of this and who was at the head of the committee: Are you in all sincerity telling us today that you see an absolute and urgent need for such a bill?

**Dean Cohen:** Well, that is a good, tough, honest question.

**Senator Choquette:** Yes.

**Dean Cohen:** It makes me, therefore, have to spell out a little more carefully some of the implications of it. What your question really points to is another question, if I may say so, senator, which is this: If at the time of writing chapter III of the Committee's Report describing the then existing condition of hate propaganda—this is in 1965 when we did our work—did there appear to be a sufficient degree of dissemination of the propaganda, and public reaction to it, to have justified the conclusions we arrived at in the report, and do those conditions hold true now in February of 1968? In short, do the conditions which led us to conclude that there was a situation, factually, which required a legal remedy continue to exist today as they did three years ago? That is really the implication of your question. Am I correct in putting it in that way?

**Senator Choquette:** That is correct.

**Dean Cohen:** You point to a series of answers received from the attorneys general of the provinces all of which say: "We know of no real urgency in respect of this issue at this time in our province".

Well, I do not know from any personal knowledge or investigation what the situation in February, 1968 is. We received our information from several sources. We received it from the Government of Canada—from the Department of Justice and from many agencies of the Government of Canada. We received it from many private sources whose credibility we had reason to judge to be sufficiently acceptable to be taken seriously. Therefore, as of the date of writing this chapter of the report, which describes the condition of hate propaganda distribution, that chapter was, in my opinion, a valid chapter.

If you ask me now whether it is a valid chapter in 1968 then I am inclined to say that my answer is the same, namely, yes, despite the answers given by the attorneys general mentioned. My reasoning is as follows:

It really does not matter, senator, whether in 1965 or 1964 we had 14 organizations producing X hundreds of thousands of pamphlets in nine cities of Canada, whereas in 1968 there are only nine organizations producing only 10,000 pamphlets in three cities of Canada. What matters is that there is an ebb and flow to this thing, and at this particular moment, when this inquiry is being held today, there may be an ebb, or there may not

be the same intensity. But, that does not affect the nature of the venom that this particular kind of distribution causes. It does not mean that you have really changed the reaction of people who are potentially prejudiced and who, when they are exposed to this kind of literature, find their prejudice pushed over the precipice into hatred.

Indeed, you could not make much social policy by asking this question, if every time a commission of inquiry sat and made certain findings, where part of the findings were of a general nature what we said was: Look here, this kind of information or propaganda, whatever its intensity, is irrelevant and dangerous in a free society". It is less significant therefore to ask the quantitative question. The question really becomes qualitative. Is the quality of Canadian life affected by this kind of material, almost independently of its quantity?

Of course, quantity and quality cannot be separated that absolutely. You might have a situation, in which the quantity is so low that the quality of the question almost entirely changes the nature of the analyses. That is not my impression here. It is not the impression of those who urge this legislation. That there continues to be a certain minimum flow of hate propaganda in Canada seems to be the view of those who watch these things day in and day out. If that is so, then that is bound to affect the quality of life, and the quality of opinion.

So, my answer is that if nine or eight or seven attorneys general say at this time: "We do not find the flow of that propaganda material to be significant", or: "We are not getting very much of it across our desks", then those answers, for me, would not be determining factors. The real question would be: Are we in a situation in which there is a continuing ebb and flow of these materials, and is the original analysis correct? Is the quality of Canadian life being affected? Are the relations between people because of vilification, however modest, being affected? Is that vilification being carried on, and is there a way by which we can remedy the situation without endangering other values as well?

I would say, senator, without pretending to know the facts of 1968 in any detail, that I am not able to debate with Mr. Wells the contents of his letter that appeared in the newspaper, but I must give it as my own judgment that if I am right in saying that

there will be from time to time an ebb and flow of this material—sometimes more and sometimes less—it still does not affect the basic undesirability of allowing that material to circulate, because I assume that freedom of speech in a democratic society does not require this kind of licence.

I am prepared to argue, therefore, that the changing dimension of the materials may be irrelevant to the discussion.

**Senator Choquette:** Thank you.

**The Chairman:** I might point out that among the exhibits that we received this morning there was something that was distributed on February 14 in London, Ontario. I will endeavour to get that for you so that you may look at it.

Dean Cohen, did you find that there was a relationship or no relationship between the volume of distribution of this type of material and the economic conditions that were existing in the country?

**Dean Cohen:** Well, it is hard to say because I suppose the years for which we had the materials were between 1961 and 1964. We sat in the inquiry from February, 1965, to September 1965. Those were pretty prosperous years. There is no doubt that we had various opinions which touched on the matter you raise, namely that if you allow a certain base to grow up in Canada for this kind of information and material its real threat to the good society in Canada will come to be felt when something goes wrong with the economy or with Canada. Let there be certain tensions and your most vulnerable people become even more vulnerable under those conditions, and the vulnerability has been further added to by the existence of this kind of material.

Therefore a wise society says, "Look, we know our own people. We have a feeling for the way in which the human heart behaves irrationally under many conditions, when we are hungry or afraid. Fear and hunger can cause a wide variety of forms of irrational behaviour." If there is a foundation laid in Canada by this kind of material, encouraging prejudice, forced by this kind of "critical" mass in the very centre of this prosperity, why have it at all?

This really goes back to what Senator Lang referred to this morning. If I can leave the technical side for the moment, it really involves a frank view of the nature of the human heart. What sort of people are we? It

was suggested that it was a discredit to Canada's self-image to have this kind of legislation. How can it be a discredit to Canada's self-image when everybody is capable of acts of great stupidity, of great violence and great inhumanity?

Probably the mark of a good civilization is the number of insurance policies it takes out against its own potential for bestiality, and these insurance policies are one of many forms of protection we take out to minimize the risks that some of us may go berserk one day and take it out on our neighbours, or a group of neighbours. There is no reason why we should not honestly face up to the fact that we are all capable of irrational behaviour given the conditions, given the provocations and all the circumstances which often give rise to groups of people going berserk, against each other. One looks upon this legislation as one type of minimum insurance policy that does not threaten other values. You may say it is protection independently of the amount of danger from one moment of time to another. I do not know if I have answered the question.

**Senator Choquette:** Yes, but I am still not yet convinced of the need for it.

**Dean Cohen:** Perhaps I might just pursue this line, because it may be of some importance for some honourable senators. If you take the line that quantitatively you are now persuaded the amount of effect is certainly small, how far do you want to push it? To be logical you would have to do something more. First of all you would really have to make your own survey, or have this committee set about making a factual survey far better than a newspaper letter written to an attorney general who has written back briefly without necessarily exploring all aspects.

Let me say something else about attorneys general in this respect. Our major source of information was not the attorneys general of the provinces; they were often quite poor sources of information. I can assure you of that as chairman of the committee. Our major sources of information were agencies of the federal Government. They knew; they had files; they had the records. It was not the attorneys general of the provinces. Indeed, it was always surprising that in provinces where we had a good deal of information about circulation, from federal sources, to find that the municipal and provincial police and the attorney general's department knew very little about it.

That has no bearing on the factual position in 1968. If you wanted to be 100 per cent sure that the Senate committee was getting all the possible facts as of 1968 you would have to go much farther; you would have to have your own inquiry and you might have to seek out the same federal Government agencies that we sought out. Even when you have got your information, even if you were satisfied the amount of propaganda being circulated was smaller than we had said it was in 1965, you would still have to ask yourselves whether the kinds of effects of even that small amount warranted this particular legislation. Certainly if you go back to what I have just read concerning the advocacy of genocide, even if tomorrow there were zero pamphlets saying, "My neighbours shall be destroyed as a group," if you could not find a pamphlet but in the previous D number of years there had been lots of pamphlets, you would still have to ask the qualitative question—not quantitative but qualitative—does this advocacy have any place at all in a democratic ethical society? Can you defend it on any ground?

**Senator Choquette:** Who would take seriously the advocacy of exterminating a whole group, or sterilizing them? I thought this was the weakest point in the bill, and so did Senator Salter Hayden and many others. Genocide is an impossibility in our democratic way of life in Canada, and Senator Hayden's argument was that even in Germany in the days of Hitler if they had had such legislation it would not have mattered, because there was a maniac who became a dictator and ran the whole works in the way he thought he should and according to his own objectives. But there is no such danger in Canada. That was Senator Salter Hayden's argument, and it is mine. I think that is the weakest point in the whole bill, but you seem to give it such importance.

**Dean Cohen:** I give it only this importance. I do not want to exaggerate it. We thought it was the easiest part of the bill for this reason. What matters is not really how many people will believe it. If you were able to satisfy me that very few people in the City of Ottawa or the City of Montreal, no more than half of one per cent, really took seriously the suggestion that all negroes, all Jews or all Jehovah's Witnesses should be exterminated; if pamphlets were published, and you proved to me that of the 10,000 readers of the pamphlets not more than 500 took it seriously, less than one half of one per cent, or whatever it was,

would you then be satisfied you had solved the problem when the target, the Jehovah's Witnesses, the Jews, or whoever else it was, came and said, "Listen, do I really have to stand idly by and do nothing about it being said that I shall be destroyed? Do you want me to stand idly by and take this as if it is meaningless? Are my emotions as a democratic citizen in a free society meaningless? Is it irrelevant to know how I feel at being described as a human target for destruction?" Surely you must be interested in the emotional response of a group of citizens being described in this fashion.

Even if you prove to me that not one-third of one per cent of the population believes it should be exterminated, it does not matter. What matters is whether anyone has the right to put any group of people in the psychological position where they see themselves described as fit for the gas chamber. I suggest to you that no democratic process can justify this as part of a legitimate avenue of communication. Even if you can satisfy yourselves that few people believe it, why should the target remain silent? Why should the target stand by and be vilified? On what basis?

**Senator Lang:** It does not have to stand by and be vilified.

**Dean Cohen:** Under our present law he can do nothing, not a thing.

**Senator Lang:** It only concerns the ridiculous proponents of such preposterous nonsense.

**Dean Cohen:** Maybe, but you are going on the assumption that the instrument of ridicule can deal effectively (a) with the emotions of the persons involved and (b) with the few people who are on the borderline of prejudice and may be pushed over by this kind of advocacy. Dr. Kaufman's paper suggests that there are a sufficient number of people in any community whose prejudices are only a degree away from being pushed over the line to psychopathic behaviour, and that really one of the great dangers of this kind of propaganda is that they read it and their minds and spirits already are partially prepared by their own background, and enough of this stuff pushes them over the line. They become psychopathic, violent, hateful or some other form.

So, on both these grounds, why should a group of Canadians have to stand by idly without recourse, except that of irony or ridicule.

Secondly your solution would not face the possibility that some people will believe this as an image of the Jews or someone else, now downgraded by the very act of the attack being documented in this manner. Here is a paper being sent about where their authors are saying that certain people should be exterminated, that they will leave only 10 per cent of the Jews alive.

I assure you my emotions are not more involved than those of anyone else. However, I cannot see any logical reason for standing idly by and having no recourse. So I see absolutely no harm to the public interest, to the interests of free speech, by saying that there is no right in anyone to advocate genocide for any group of Canadian citizens.

**Senator Roebuck:** Mr. Chairman, would you excuse me. I have to go.

**Senator Lang:** Changing the ground for discussion, would I be guilty of offence, under that first section, if I advocated destruction of the Italian mafia?

**Dean Cohen:** You would not, because you will notice that we confine the target here for the purpose of this definition to an identifiable group. The words "identifiable group" have their own definition. The word "Italian" may relate to national or ethnic origin, but the word "mafia" takes it immediately out of that category and makes it have no relationship to this legislation at all. If you talk about "the Italian community," yes, you would be for it. If you said "all Italians in Toronto should be exterminated," this legislation would stop that.

**Senator Lang:** The word I use is "destroy".

**Dean Cohen:** Should be "destroyed".

**Senator Lang:** I said "destroy a group". I could have an intention to destroy a group, without in any way inflicting any personal injury whatever on the people involved. The group is the target, not the individuals. What I am trying to get at is this, how broad is the net cast? In other words, why was not the word "kill" used instead of "destroy" in subsection (2).

**Senator Bourque:** Mr. Chairman, while they are debating this question, Senator Le-françois and I will have to leave at 3.30. Unfortunately, we did not know this was going to last this afternoon, and have made some arrangements.

**The Chairman:** That is all right.

**Senator Inman:** Mr. Chairman, I will have to leave in a very few minutes.

**Senator Choquette:** We will all be through by 3.30, as I think Dean Cohen has been very good in his explanations and there are only a few more questions.

**Senator Lang:** I can see another four hours. I do not want the Dean to get away.

**Dean Cohen:** I frankly believe you ought to feel entirely free, Mr. Chairman, to call upon me whenever you want. If it is indicated here that it is the wish of some senators to leave, I think it might be possible for you to invite me to come again, before your hearings are over. I would rather do that than rush through any particular explanation. I would be very glad to return and spend an extra two or three hours. This perhaps would exhaust the kind of thing Senator Lang is asking about now. It is a very subtle question, as to why the verb "to destroy" was used and not the verb "to kill".

I am going to give two answers. I am not sure I know the answer to that, senator.

**Senator Lang:** You see the distinction I am trying to make between them?

**Dean Cohen:** I do. If you look at the Convention itself, it talks about "destroy".

**Mr. Hopkins:** It says "killing".

**The Chairman:** "Killing" is used later. It says "destroy in various ways".

**Dean Cohen:** The word "destroy" means that the court should be compelled to say it means elimination, to destroy by causing serious bodily or mental harm to members of the group. Look at the subparagraphs (a), (b), and (c).

Paragraph (a), killing members of the group, that speaks for itself. Then paragraph (b) causing serious bodily or mental harm to members of the group; and (c), deliberately inflicting on the group conditions of life calculated to bring about its physical destruction. You will notice, Senator Lang, we do not recommend in our report the inclusion of, I think, (d) and (e). They were put in by the draftsman of the bill. We were content to leave our definitions at, I think it was, (a), (b), (c).

**The Chairman:** You had (a), (c) and (d).

**Dean Cohen:** We recommended only (a), (c) and (d). Paragraphs (b) and (e) were put in by the department.

The paragraphs from (a) to (e) are to be found in the Genocide Convention itself. All those five subclauses are part of the original convention. We took three of them. The reason we left out (b) and (e) was that we thought they were not relevant to Canadian life and factual needs. We thought that "causing serious bodily or mental harm to members of a group" raised all sorts of subtle and various sophisticated problems which we did not want to see or could see ourselves engaged in. In regard to paragraph (e), forcibly transferring children of the group to another group, it did not seem to fit our case. It seemed to have a bearing on European life, in which forcible transfers of children were a very substantial part of the postwar experience.

I wish to be absolutely fair about my own reactions to this debate. I can see that someone might put it up to me, "If you leave in (e) as the draftsmen have done, what is the position, for example, of the Dukhobors children forcibly detained for school purposes in British Columbia? My answer—and no lawyer gives one off the cuff—would be that one of the reasons we left out (b) and (e) was we felt they raised too many problems that had no particular relevance to the hate propaganda issue as we saw it in Canada. The department saw it otherwise, and put these two clauses back in their draft of the bill.

That is the other principal substantive way our draft differs from this draft. But I come back to the answer I gave the honourable senator. I sincerely believe that the quantitative answer is one that is not satisfactory. There are changes from time to time. The real question is a qualitative answer, and the analogy is, is the real freedom of debating life in Canadian society affected by this right to advocate genocide of a group.

Obviously, it seems to me no one could possibly defend this kind of hate. They would not defend its advocacy. There seems to be every reason to prevent it from being done.

**Senator Lang:** I can conceive of a person intending to destroy a group—and I do not mean by killing the persons composing that group, but intending to destroy a group as such. I just used the mafia as an example. There are probably lots of examples that would fit squarely into the definition over

here, and in the course of so doing, causing mental harm, whatever that may be, to members of that group, and yet the objective would be something, that, if I could bring the example into focus, would be something quite unobjectionable in our way of life. I think you can see what I am driving at.

**Dean Cohen:** Yes, but it would be very hard to dream up, for the draftsman. Let me turn to the other side of the advocacy. It would be hard to find the kind of mental distress and harm that was contemplated by this particular language. Even though I support paragraph (b), I did not put (b) in our draft, and this is consistent really with this kind of thing you have in mind.

You may say to yourself "I would like to see the mafia destroyed," but having said that, you mean "the organization" destroyed. But if you said "I would like to see the Italian community destroyed," that is quite a different matter, you are talking then about the human beings and the instruments and the institutions that make up that community, particularly the human beings. I think this is a legitimate use of the verb "destroy" and you cannot persuade me that the verb "destroy" is wrong, if the choice is something that can be identified as a legitimate target—because the mafia is not the kind of thing this bill contemplates. It is human beings in the social setting. The mafia is not a social setting, not a legitimate social setting.

**Senator Lang:** Perhaps some of our policy with respect to the Dukhobors is pretty close to the line. Many people thought the Dukhobors should be destroyed, *qua* group.

**Mr. Cohen:** I do not think you would find even vigorous opponents of the Dukhobor policy in British Columbia going as far as that statement. I know of nothing in Canadian public life which assumes the forcible assimilation of any minority, which is what is implied by your remark. I know of nobody—even at the most severe moments of violent behaviour of the Dukhobors or Sons of Freedom in British Columbia—ever suggesting that their group life be destroyed. Not to the best of my knowledge.

**The Chairman:** It has been suggested that their illegal actions should be restrained.

**Mr. Cohen:** But not as a group destroyed.

**Senator Lang:** Their illegal actions tend to spring out of their cohesion.

**Mr. Cohen:** One can regret their use of dynamite and their disrobing. But in spite of those provocations, I doubt if anybody ever suggested they should be destroyed as a community. I seriously doubt that. In fact, I would fight that personally to the very bitter end, because that is the opening of a dangerous door.

**Senator Lang:** Would you object to the substitution of the word "kill" for the word "destroy" in subsection 2?

**Mr. Cohen:** It depends. It does not make any sense in relation to other matters. It only solves the problem of subsection (a), and it is redundant for (a).

...to destroy in whole or in part any group of persons:

(a) killing members of the groups...

That speaks for itself.

(b) causing serious bodily or mental harm to members of the group;...

That is entirely up to honourable members. If they want to retain that, I will not either support it or attack it.

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction;...

I think that is something important to retain in this bill.

**Senator Lang:** What if I advocated setting up concentration camps—

**The Chairman:** On Banks Island without proper clothing, for example? You could send everybody up there in bikinis.

**Mr. Cohen:** If they are all members of an identifiable group, but, if you are talking about concentration camps during wartime, where people are imprisoned because of breaches of the regulations concerning Canada's defence, then that is a different matter entirely. However, we are talking about those who are united on grounds of race, creed, origin and religion and so on. You must bear in mind that that is the focus of this legislation. We are talking about identifiable and vulnerable minorities, people who because of their beliefs or colour are made vulnerable in 1968, and in 1968 we know that there can be prejudice between peoples because of differences in race and colour and so on. We know they are targets and we are trying to ensure against exploitation of their minority

status in this way. That is the real objective. I can see no harm in providing techniques to ensure such an end.

**Senator Lang:** Are the Scots a vulnerable minority?

**Mr. Cohen:** No. They are an ascendant majority in this country. As a matter of fact, they are the most successful export the British Isles have had. And quite rightly so.

**Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel:** May I ask the dean a question for purposes of clarification? It has to do with the relationship between the United Nations Convention and the report and the bill. There does not appear to be anything in the Convention having to do with advocacy or promotion. The reason I ask the question is that we had an LSD bill before the Senate not long ago and the Department of Justice would not let us use the words "promote" or "advocate" in connection with advocating the use of LSD. They said it was improper and so on. I realize that that is a double-barrelled question, but there does not seem to be anything about advocacy or promotion in the Convention unless it is covered under incitement. We have had this objection in connection with the LSD bill. Several amendments were considered concerning people who advocated or promoted the use of LSD, but they were finally not proceeded with. I just raise this for purposes of clarification.

**Mr. Cohen:** Well, I would have to check the Convention to see whether there was certain other indirect language which achieved the same objective. After all, as Senator Choquette quite properly pointed out, the number of people who would believe this is going to be very small. Secondly, the implementation of genocide has a nil risk in Canada. I mean it is virtually a nil risk, the actual murdering of large numbers, unless we go berserk. We can all go berserk, of course, but that is not the issue. The issue is, if there are people mentally sick enough to want to print pamphlets in thousands of numbers saying that Jehovah's Witnesses or Jews should be exterminated, how are you going to deal with them? There is no rational reason for saying that that is just part of the rules of the game. Had the genocide convention become part of the law of Canada, then no doubt the statute which implemented the genocide convention would possibly have read in such a way that it not merely made the crime of genocide as an item in the schedule but also the advocacy of genocide.

**The Law Clerk:** This I do not know.

**Mr. Cohen:** I am making the assumption that this would have been a very tempting thing to have done in order to make the entire Convention viable. If we admit to each other here that the chances are that not many people will be killed in this way, nevertheless there is still the chance of somebody advocating it.

**The Law Clerk:** I was not arguing against the principle. That is not my function. I was asking the question whether the Convention dealt with advocacy and promotion.

**Mr. Cohen:** You are asking me a technical matter, and I will have to take a fresh look.

**The Law Clerk:** I did not see where it did, but it may.

**Mr. Cohen:** Ex law deans have no right to bother present law deans in that way!

**The Law Clerk:** I withdraw the question. It really does not make much difference. The question is one of principle, and I am not arguing about the principle. I want to get the relationship between the Convention and the report and the bill on the question of genocide. Apparently we assume that genocide as such is covered in the Criminal Code, because we do not legislate against genocide as such in the present bill. All we do is legislate against advocating or promoting it.

**Mr. Cohen:** The point I wish to make here, of course, is that although Canada has not implemented the genocide convention, the reasons given publicly, you will often find, are that provisions with respect to homicide deal with the matter indirectly by making individual murder a crime and, therefore, the murder of many people is, logically, a similar crime.

**The Chairman:** A multiple crime.

**Mr. Cohen:** A multiple crime. Consequently, it is argued that it is unnecessary. However, that is a far cry from saying that the rules on homicide or the rules on counselling homicide or conspiracy or intent or attempt or inciting deal with this kind of group destruction which may be advocated. The real question is: Ought there to be a place in Canada for advocating the destruction of an identifiable group of Canadians? And I say there is no place in Canada for that. No place. No justification.

**Senator Lang:** I still feel that in your use of the words you are confusing the word "destroy" with the word "killing". This is what keeps bothering me. I sense behind this legislation that there is a philosophy of retention of group cultures within the Canadian mosaic, as opposed to the melting pot concept. I may be wrong, but behind this thing I sense this sort of philosophy of self-preservation of ethnic or religious groups as against the melting pot effects of one Canada. I am not a proponent of the mosaic concept or of the melting pot concept, but I am certainly prepared to stand for the right of any person who wishes to propound the melting pot concept consistent with all other reasonable actions and, if someone can advocate—I really have got to get another verb for "destroy" in order to take it out of the sphere of semantics.

**Mr. Cohen:** Elimination.

**Senator Lang:** That is harsh.

**Mr. Cohen:** Or disintegration.

**Senator Lang:** That is a harsher word.

**Senator Choquette:** Disbanding.

**Senator Lang:** Disbanding, yes. For example, the advocating the disbanding of the Italian community in Toronto is not the kind of thing that should become an offence under the Criminal Code.

So long as that subclause (b) is in there, I think such a person falls within that section.

**Mr. Cohen:** Let me give you two answers. The first question is how far does this really serve the interests of the preservation of multi-ethnicism as Canadian policy? Is that its real origin? I think that is a very interesting question, Senator Lang, if I may say so with respect. My answer to that is that on the surface you might give that as an interpretation, but you must ask what is the historical basis for clause (b)—indeed, for most of those clauses. The historical basis for those clauses, Mr. Chairman, is World War II and post World War II experiences—particularly World War II—arising particularly out of racial tragedies of Central and Eastern Europe, mostly under German occupation and conquest. And to some extent also it arises from the problem of some of the interwar minority headaches where treaties were signed to protect minorities in majority countries. To a large extent because of a kind of Central European racist tradition you can

attribute the history of this particular provision. It is designed to prevent some of the European experiences from being transplanted onto a Canadian site. As I say, this may encourage Canadian ethnic groups who face the possibility of being assimilated into a melting pot. As to that theory I can only say that I would be surprised if the Canadian philosophy of the future of our many peoples is not now a pretty well defined mosaic philosophy rather than the melting pot philosophy. I would go further and I would say that the bicultural debate, and the whole movement toward the role of two languages, reinforces the sense of linguistic and cultural identity in other minorities. We are not saying, in consequence of the Report of the Royal Commission on Bilingualism and Biculturalism, to the Ukrainians in Saskatchewan, the Germans in Manitoba and the Finns in Alberta, that they are any less Canadians. When the Finns say "We want to have a Finnish newspaper or a Finnish night school" or the Ukrainians say "We want to have a Ukrainian newspaper but we still want to live side by side with our French and English neighbours," you do not say to them that only English or French newspapers are permitted and that no others are allowed. Canadian history has given the answer to that. We make a great fetish in this country of saying that unlike the United States we have not adopted the melting pot theory. We believe that each group should encourage its own cultural origins and traditions without sacrificing their chances of being thoroughly effective Canadians. I suggest that this is now part of the Canadian mystique, politically and socially. Relating this to the particular case of prov-

ince X—let us say that the Province of Saskatchewan or some other province were to say "We are going to compel the German or Ukrainian community to assimilate; you can assimilate with either the French or the English but you cannot have any other symbols; and if you were to say to the German community that they may not have their German newspapers, clubs, their Goethe societies and poetry-reading clubs; in my opinion that would be on the edge of this kind of problem. It would be an attempt to make their social life culturally unviable. This could result in serious bodily or mental harm to the life of the community concerned. I would suggest that as a matter of public record, what I am now describing as the Canadian way of life, is the one that most Canadians now support. They accept that we are a multicultural society with two official and principal languages, English and French, but recognizing the not necessarily subordinate position of all other cultural groups.

**The Chairman:** Dean Cohen, and honourable senators, I think we are getting to the point that if we were to continue it would be merely a matter of putting this on record but we would have to go over it again. Thank you very much, Dean Cohen, for being available today. I will let you know as soon as it is convenient when we can have another meeting.

**Dean Cohen:** Thank you for letting me talk so long.

**Senator Choquette:** It was a pleasure.

The committee adjourned.

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Second Session—Twenty-seventh Parliament  
1967-68

# THE SENATE OF CANADA

PROCEEDINGS  
OF THE  
SPECIAL COMMITTEE  
ON THE

## CRIMINAL CODE

(Hate Propaganda)

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The Honourable J. HARPER PROWSE, *Chairman*

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No. 3

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*Third Proceedings on Bill S-5*

intituled:

“An Act to amend the Criminal Code”.

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THURSDAY, MARCH 7th, 1968

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### WITNESSES:

*Quebec Conservative Party:* John P. Boyle, Leader. Paul J. Kingwell,  
Assistant Leader.

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ROGER DUHAMEL, F.R.S.C.  
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY  
OTTAWA, 1968

THE SPECIAL COMMITTEE ON THE CRIMINAL CODE  
(Hate Propaganda)

The Honourable J. Harper Prowse, *Chairman*

The Honourable Senators:

Boucher	Laird
Bourque	Lang
Carter	Lefrançois
Choquette	O'Leary ( <i>Carleton</i> )
Croll	Prowse
Fergusson	Roebuck
Gouin	Thorvaldson
Hollett	Walker
Inman	White—(18).

(Quorum 5)

## ORDERS OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 2nd, 1967:

"The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Bourget, P.C.:

That a Special Committee of the Senate be appointed to study and report upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5, intituled: "An Act to amend the Criminal Code"; and

That the Committee have power to call for persons, papers and records, to examine witnesses, to report from time to time, and to print such papers and evidence from day to day as may be ordered by the Committee, and to sit during sittings and adjournments of the Senate.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative, on division."

*With leave,*

*The Senate reverted to Notices of Motions.*

"The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Bourget, P.C.:

That the Special Committee of the Senate appointed to study and report upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5, intituled: "An Act to amend the Criminal Code", be composed of the Honourable Senators Boucher, Bourque, Carter, Choquette, Croll, Fergusson, Gouin, Hollett, Inman, Laird, Lang, Lefrançois, Méthot, O'Leary (*Carleton*), Prowse, Roebuck, Thorvaldson and Walker.

After debate, and—

The question being put on the motion, it was—  
Resolved in the affirmative, on division."

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 21st, 1967:

"Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Roebuck, seconded by the Honourable Senator Deschatelets, P.C., for second reading of the Bill S-5, intituled: "An Act to amend the Criminal Code".

After debate,

In amendment, the Honourable Senator Flynn, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be not now read the second time but that the subject-matter thereof be referred to the Special Committee of the Senate appointed to study and report

upon amendments to the Criminal Code relating to the dissemination of varieties of "hate propaganda" in Canada as set out in Bill S-5, intitled: "An Act to amend the Criminal Code".

After debate, and—

The question being put on the motion, in amendment, it was—  
Resolved in the negative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Connolly, P.C., moved, seconded by the Honourable Senator Deschatelets, P.C., that the Bill be referred to the Special Committee of the Senate on Hate Propaganda.

The question being put on the motion, it was—  
Resolved in the affirmative."

Extract from the Minutes of the Proceedings of the Senate, Wednesday, December 6th, 1967:

"With leave of the Senate,

The Honourable Senator McDonald moved, seconded by the Honourable Senator Macdonald (*Cape Breton*):

That the name of the Honourable Senator White be substituted for that of the Honourable Senator Méthot on the list of Senators serving on the Special Committee on the Criminal Code (Hate Propaganda).

The question being put on the motion, it was—  
Resolved in the affirmative."

J. F. MACNEILL,  
*Clerk of the Senate.*

## MINUTES OF PROCEEDINGS

THURSDAY, March 7th, 1968.  
(3)

Pursuant to adjournment and notice the Special Committee on the Criminal Code (Hate Propaganda) met this day at 3.30 p.m.

*Present:* The Honourable Senators Prowse (Chairman), Bourque, Carter, Choquette, Fergusson, Hollett, Laird, Lang, Roebuck, Thorvaldson and White.  
(11)

*Present;* but not of the Committee: The Honourable Senators Haig and O'Leary (Antigonish-Guysborough).

*In attendance:*

R. J. Batt, Assistant Law Clerk and Parliamentary Counsel,  
and Chief Clerk of Committees.

Bill S-5, "An Act to amend the Criminal Code", was further considered.

WITNESSES:

*Quebec Conservative Party:*

John P. Boyle, Leader.

Paul J. Kingwell, Assistant Leader.

At 5.45 p.m. the Committee adjourned to the call of the Chairman.

Attest:

Frank A. Jackson,  
*Clerk of the Committee.*



# THE SENATE

## SPECIAL COMMITTEE ON CRIMINAL CODE (HATE PROPAGANDA)

### EVIDENCE

Ottawa, Thursday, March 7, 1963.

The Special Committee of the Senate, to which was referred Bill S-5, to amend the Criminal Code, met this day at 3.30 p.m. to give further consideration to the bill.

**Senator J. Harper Prowse (Chairman)** in the Chair.

**The Chairman:** Honourable senators, we have with us today a delegation from the Quebec Conservative Party, led by Mr. J. P. Boyle, who is the leader; Mr. Paul J. Kingwell, the assistant leader, who will read the brief which has been distributed; Mrs. Edna Kierans, a member of the party, who was here but unfortunately had another appointment and was not able to stay; and Mr. Richard Charlton, also a member of the party, who is here as a member of the delegation.

I suggest that we follow the usual procedure and permit Mr. Kingwell to read the brief through. As he goes along, honourable senators might mark points on which they wish to ask questions. Is that agreeable?

**Hon. Senators:** Agreed.

**Mr. Paul J. Kingwell, Assistant Leader, Quebec Conservative Party:** Mr. Chairman and honourable senators, as has been suggested to you, you might mark the areas on which you wish to ask questions.

Honourable senators, although the authors of this brief are aware that hate is disseminated by those who are driven by personal or monetary gain; by those who pursue this activity as a personal or group effort, we are concerned here, today, with those who have been misled and are now embarked in the cause of supra or ultra-nationalism, or other political isms.

The word "literature" usually accompanies the word "hate" which, when used together ordinarily implies "poison" letters, pamphlets,

etc., sent through the mails or just stuffed into letter-boxes.

It is submitted that there is a more insidious system of spreading hate. Current history provides the best examples; the regime of Germany's Third Reich, and the knowledge that Chinese children are being taught to hate, and sing songs of hate, towards Americans and the capitalistic societies. In this connection, names like Hitler and Mao Tse Tung come to mind immediately. These are crimes that were and are committed in the name of nationalism.

While there may be evidence to show that certain individuals, groups, or boards are on a similar course in other places in Canada, this brief is particularly concerned with the dissemination of hate in the Province of Quebec, where the French-Canadian minority has been, and still is, taught to hate the English-Canadian majority or, in the restricted meanings of the words, where the national minority becomes the provincial majority and vice versa. Surprisingly, this activity is sponsored, or at least condoned—and condoned in the sense that it is overlooked rather than forgotten—by the Government of the Province of Quebec and the various Municipal and Regional School Boards; the literature concerned is called "Canadian History" as taught in French-speaking schools.

The ramifications of such a practice are incalculable and the eventual outcome is almost inevitable; the separation of Quebec, either peacefully or violently. We are at once nauseated and apprehensive that, in spite of all warnings—which are clear enough, as proven by the examples which are listed hereinbelow—no one at any time in any Canadian locality seems in the least concerned with the catastrophe which Canada and Canadians are sure to suffer if the present course is not altered.

**Senator Choquette:** Before you go ahead, I did not get your name.

**Mr. Kingwell:** It is Kingwell, sir.

**Senator Choquette:** And you are representing?

**Mr. Kingwell:** The Quebec Conservative Party.

**Senator Choquette:** You mean that you are not concerned with more than the province?

**Mr. Kingwell:** It is a provincial party.

**Senator Choquette:** It is almost non-existent? I thought the Union National was the party. Have you run for election?

**Mr. Kingwell:** I ran in Outremont.

**Senator Choquette:** Were you elected?

**Mr. Kingwell:** No.

**Senator Choquette:** You carry a lot of weight here, I take it.

**Mr. Kingwell:** I hope we will make some sense to you.

**Senator Choquette:** I am anxious to hear you, but so far your organization as a political one does not impress me.

**Mr. Kingwell:** I am sorry about that, sir.

**Senator Choquette:** You are entitled to speak, but I want to make that point. You may go ahead.

**Senator O'Leary (Antigonish-Guysborough):** Mr. Chairman, excuse me. I am not a member of this committee. I wish to express a point of clarification, that the footnote on page 13 might be read first.

**The Chairman:** Thank you very much, senator.

**Mr. Kingwell:** Senator Choquette, you may like to read, as Senator O'Leary suggested, the item at the end of the brief, on page 13.

I will read it now.

A word about our name. There is no affiliation between the Progressive Conservative Party and the Quebec Conservative Party. In the 1966 provincial elections of 1966, Liberals did not talk as Liberals, nor did the National Union talk

as Conservatives (which they are supposed to be). All other parties were outright separatists. We felt that the voice of moderation had been stilled, at least in the traditional parties. We considered naming ourselves "The Moderate Party," but that would leave the electorate guessing where we stood, either left or right of centre. As the Progressive Conservatives had not participated in any provincial contest since the late 1930's, we felt that "Conservative" would indicate our position to the satisfaction of all concerned.

Now, continuing with our brief:

It is believed that the separation of Quebec will evolve peacefully if and when the population of those who support "Special Status", "Associate Statehood"—forms of which are presently advocated by the Opposition, Quebec Liberals, or the Government, the National Union—or outright "Separatism" surpasses the combined total of English-speaking Quebecers and French-speaking "Moderates". While practically any event can be the cause of riot, revolution, or insurgence—even a labour strike, as occurred in the Town of Mount Royal on Tuesday, February 27th, 1968—we cannot emphasize too strongly that if Education, specifically the hate engendered in and by the present courses in Canadian History as taught in French-speaking Quebec Schools, Colleges, Pensions and Universities is allowed to proceed unchecked, separation is only a matter of time; that it will be achieved by the natural process of generation or population turnover, or it will be born out of violence.

The items which are quoted in Sections (I) and (II) of this brief indicate beyond the shadow of a doubt:—

- (i) That present Quebec political leaders mistrust—even hate—the Federal Government and what they call "Federal Intervention" into Quebec affairs.
- (ii) That present Quebec political leaders dislike—even hate, in some cases—the English-speaking population in their midst and in the rest of Canada.
- (iii) That the collective and individual attitudes of Quebec political leaders are directly traceable to the education which they received in French-speaking Quebec Schools.
- (iv) That, therefore, the provincial "right" to educate is in reality a national

"wrong" which is bound to reverberate throughout the pages of the history of a land mass which by that time may even have lost its identity.

We have said it before, we say it now, and will say it again that the diagnosis nauseates us and the prognosis frightens us. We are sickened because a sizeable portion of the RIN (Separatist) Party in Quebec are avowed Marxists who are using the nationalism of the French-Canadian to cause dissension, discord and distrust between Canadians, all Canadians regardless of the description before the hyphen. We are frightened because it would appear that the Canada we know will not be won due to any extraordinary fortitude demonstrated by separatists, but will be lost because of the apathy which other Canadian authorities have portrayed in this, the most serious of Canadian problems. In this regard, it is not too difficult to picture the division of Canadians, or even of Quebecers. East and West Pakistan, North and South Korea and North and South Vietnam are present-day entities which were born in exactly this fashion.

Although some are dedicated nationalists, the balance of the separatist or separatist-leaning leaders in Quebec are driven by personal desire rather than by any truly altruistic motives: but in all cases the responsibility lies with the Educational system and some teachers and professors, newspapermen and broadcasters, who are engaged in various forms of educating the masses to their point of view, which, when simplified, is that the English conquered New France as a result of which the French population have been used and abused in almost every conceivable fashion since 1759.

The following points indicate that education and educators are, or have been taking advantage of captive audiences to further the aims of supra-nationalists or separatists. English-speaking Quebec schools teach a version of Canadian history which is based on record and fact while French-speaking Quebec schools teach a history which is interwoven with emotionalism, sentimentalism, or hero adulation in which the English attackers are invariably made to appear inferior to the French defenders.

1. "This Hour Has 7 Days", CBC-TV Network, 10.00 P.M., April 17, 1966; René Levesque said he was taught that "that

gallant gentleman, Montcalm, was defeated by British and American bandits". See Section (II) Oral.

2. During the 1966 Quebec Provincial Elections, a teacher, Brother Jerome (Desbiens)—alias Frère Untel—advocated that all businesses in Quebec should have French names. Sometime after Mr. Johnson's ascendancy to power, Brother Jerome resigned from his fraternity. Mr. Desbiens is now employed by the Quebec Government in some "informational" capacity.
3. The *Montreal Gazette* of October 29, 1966, contains a report "University Heads Support FLQ Suspects." This support is in the form of a petition signed by seventeen student and staff members of the University of Montreal including Dominican Father Jean Proulx and Abbé Philippe Turcotte, who requested "political prisoner status" for two "student-terrorists" who killed one person "in the spirit of Christian love and ethics." The clerics named are teaching priests. However, under the headline "Investigation of Policeman Denied FLQ Defence Lawyer", on page 2 of the *Montreal Gazette* dated February 23, 1968, is the information that Pierre Vallières and Charles Gagnon are actually ex-newspaperman and ex-teacher, respectively!
4. CBC-TV Program "7 On 6", Montreal, February 16, 1967: Pierre Bourgault No. 1 RIN Separatist said: "For the last six years I have been lecturing in schools—French-speaking schools were not specified—in and around Montreal. Ordinary classroom curriculum is suspended or cancelled during the one and a half to two hours in which I speak. I never go where I am not wanted; I always speak by invitation!" Your investigation is needed in the provincial "rights" of education.
5. The No. 2 RIN Separatist is André D'Allemagne, who is employed at the University of Montreal in various capacities, one of which is as "Adviser" to the student body. It is not unreasonable to believe that the activities of the No. 1 RIN are ably assisted by the co-operation of the No. 2 RIN.
6. Headline, *Montreal Gazette*, April 13, 1967, page 35: "Quebec Has Power For Self-Rule". The author is Professor Jacques Yvan Morin, Faculties of Law

and Political Science at the University of Montreal, and President of the Estates-General of French-Canada (See Section (II) Oral). He states that "Quebec now has all the tools it requires for self-government and does not need to consult with Ottawa on the processes of it, when or how Quebec should decide to act." He is a teaching professor.

7. Headline, *Montreal Gazette*, April, 1967, page 1; "Leaders Praise Estates-General." This article reports that Mr. Lesage (Lib) and Mr. Johnson (NU) and Mayor of Montreal Jean Drapeau have "welcomed and endorsed the Estates-General of French Canada under J. Yvan Morin and the role it is destined to play in representing and being the view of French-Canadians in Quebec and the rest of Canada." In view of Item 6 above, one can only conclude that Quebec political leaders agree that Quebec has the required power for self-rule!
8. Item *Time* magazine, June 2, 1967, page 57. "DIED. Canon Lionel Groulx, 89, Roman Catholic priest and early force behind French-Canadian nationalism, a longtime (1915 to 1948) history professor at the University of Montreal who in lectures, countless articles and thirty books preached the revival of French-Canadian civilization—which he said was—'contaminated by the Protestant and Saxon atmosphere', and advocated a Canada composed of virtually autonomous states." On the day of his funeral, Mr. Johnson closed the legislature, and called it a "day of national mourning!" It would be interesting to know how many of his students have gone into the teaching profession, and how many of their pupils have been influenced by the teachings of this man.
9. Item, *Time* magazine, December 8, 1967, page 4: "Sel de la Semaine (Radio-Canada 10-11 P.M. (date omitted from clipping through error). An interview with Father Georges-Henri Levesque, rector of the University of Rwanda and one of the architects of Quebec's quiet revolution." What is missing is the revelation that this man was a teacher at Laval University in Quebec City.

**Senator Choquette:** He is a member of the Canada Council. Was not his name mentioned as a possible candidate for the Senate?

**Mr. Kingwell:** I do not know, sir.

**Senator Choquette:** The man is a great man. I do not want to stop you; you go ahead, but I am anxious to get to the hate propaganda.

**Mr. Kingwell:** I think you are hearing some of it now, sir.

10. Excerpt, Bruce Taylor's column, *Montreal Daily Star*, September 9, 1967, Page 4; "A Grade Eleven teacher in one of the French language High Schools has one of those '100 ans d'injustice' plaques on his desk. His lectures must be something to hear."

I must point out that I had the clipping but through an error it got torn. The reference is there to the newspaper concerned.

11. Excerpt, "On And Off The Record" column, *Montreal Gazette*, January 24, 1968, page 4: "Talk about a captive audience—Prisoners freed from the Tanganyika Women's Jail say they're subjected to an incessant barrage of pre-separatist views by some of the matrons."
12. CBC-TV News, 6.30 P.M., January 29, 1968, *Montreal Segment*: "Professor A. B. Hodgetts of Trinity College, Port Hope, Ontario, states that the results of his three-year investigation into Canadian education reveal that different versions of Canadian history are taught to French and English students." He does not indicate the location of the French students, but it is not logical to believe that he would restrict his investigations to one province.
13. Under the Headline "RIN's Top Woman", *Montreal Gazette*, February 23, 1968, pages 1 and 2, Mrs. Andrée Bertrand-Ferretti is quoted as follows: "I guess I would have to say my greatest hero is Fidel Castro." Further on in the article, she said, "When I was 21—which would have been in 1958 or 1959—I took a night course in Canadian History at L'Université de Montreal. A lecturer said independence was the only answer for Quebec." What question could have any legitimacy in a factual history course—a true, untwisted version of events as they took place—which would or could elicit such an answer?

The items re Canon Groulx and Father Levesque can be multiplied many times, especially in instances where both the frocked and the lay teachers are involved in French-speaking Quebec schools. Sometime in the late 1950's—as the separatist tendencies were still sub-surface at that time, we were not taking notes—a television program revealed that the Canadian history which was taught in Roman Catholic Schools in Quebec, circa 1920 to 1940, was authored by political appointees rather than by professional historians. The books were printed by Les Frères Chrétiens (French division of the Christian Brothers) on Côté Street in Montreal, who also translated the French originals into English for English-speaking Roman Catholic schools.

I have not been able to get a book printed by Les Frères Chrétiens, but I have one by Les Clercs de St. Viateur. I have no exhibit number; it is just a book that I promised the lender I would return.

It was in the late 1920s and early 1930s that I attended public and high school, and it is from personal knowledge that I say we, English-speaking Catholic students of age 8, 9, or 10 years of age—too young to fully realize the political divisions of Federal, Provincial and Municipal Governments, or that Quebec had a French government—were actually hoping that the French (and they were not called French-Canadians in those days, either) would fare better in the next chapter! The point here is that if we, who were taught by English-speaking teachers in English-speaking schools, could sympathize with the French it is logical to believe that French-speaking students, taught a more biased version of the same facts by more prejudiced teachers, could not avoid feeling any resentment and even hatred toward the English conquerors and their descendants. Another point which cannot be stressed too strongly is that most, if not all, of these pre-twelve year old students were as unprejudiced as any other child prior to entry into the Quebec Provincial School system.

The foregoing points plus our own personal knowledge provide sufficient indictment against the system of Education current in Quebec Province. Fertile minds are being trained to believe that they are the only Canadians, and a twisted version of Canadian History teaches them that they have been used, abused and taken advantage of in

almost every conceivable fashion by Englishmen, English-Canadians and English-Quebecers. Premier Johnson's words at two Constitutional Conferences represent the attitude that "300 years in Canada gives us (the French-Canadians) the right to call ourselves Canadians." When Donald Gordon tried to explain that seniority was a major factor relating to promotional opportunities, French-Canadians roared "prejudice". Yet at two conferences, Mr. Johnson has pulled "seniority" on the rest of the Canadians who attended.

It is a rare occasion indeed when an English-Quebecer refers to the events of 1759 as anything but the Battle of the Plains of Abraham. Yet the French-Canadian politicians, teachers and "intellectuals" call the same battle "The Conquest". Perhaps it is unfair for anyone English to comment, but there seems to be some element of morbidity in the way they dwell on this and perhaps the official motto of "Je Me Souviens" has a place in this morbidity.

The following item provides further evidence that prejudice is a fact of life in the Department of Education of the Province of Quebec;

14. Headline, *Montreal Gazette*, February 22nd, 1968, Page 3: "No Recognition As University Stifles Loyola." The article says "Loyola of Montreal, a university in all but name, has received no government grants for capital or operating expenses since 1964. At the same time it receives per-capita grants of only \$550.00, the rate for classical colleges, while universities get \$1,500.00 or more per student (Lesage's grant to McGill in early 1966 or late 1965 in the amount of \$98,000.00 would indicate that there were a mere 65½ students in that institution!), and junior colleges get \$990.00. In 1966, Loyola launched a public campaign, with the understanding that the Provincial Government would contribute a large share. But not a penny has come from Quebec." Yet, three days before this item appeared, Lieutenant-Governor Lapointe's Speech from the Throne advised the legislators "You will be asked to approve the erection of a second French-language University in Montreal during the coming session." Loyola has been petitioning the Quebec Legislature almost as long as we can remember for status as a university.

15. During the Speech from the Throne, the Lieutenant-Governor devoted some of the address to English-Quebecers by reading part of it in English. Jean Noel Tremblay, our Minister of Culture, walked out of the chamber, to return only when the English segment had been completed! This is the same individual who, at the constitutional conference in Toronto, listened to one—note the number, please—speech in English through his instant translator. At other times, during English addresses, he engaged in conversation with another but unidentified member from Quebec.

The conclusion from all of the above, then, is clear. If equality is the true goal of French-Canadians and their leaders, all Canadians must be considered equally, and the only manner in which this can be accomplished is for all Canadians to be educated equally; certainly they must be taught the same versions of Canadian History. A shining example of equal education is that given in the Canadian Army, where it is called training; there is no argument, debate, or dialogue about who is superior or inferior, about the difference in pay and allowances, about who has the better uniform, nor is there any argument about the Arms Manual, or Sections 4 to 44 of Regulations more widely known as the Army Act or Riot Act. Logic dictates that, if the Federal Government cannot arrange to assume the sole responsibility of and for Canadian education, some kind of supervisory board must be devised to ensure that the teaching of hate-breeding, fire-brand history must be eliminated. Only in this way will prejudice be erased and a sense of national and nation-wide pride be instilled in the minds and hearts of Canadians.

Controls are exercised in almost all areas of our lives and for our own protection in most cases, ranging from traffic regulations to drinking hours to the food and drugs we consume. Why then is the most delicate area of all completely uncontrolled? We refer to the minds of our young Canadians whose minds are being injected with alien—certainly anti-Canadian—philosophies by people who act like the frustrated Pied Piper of Hamelin.

Recent telecasts of Chinese Communist children singing songs of hate directed at the United States of America are blood-curdling, and it cannot be denied that this serves the purpose of the Chinese rulers. But whose purpose is being served when French-Canadian

children are taught to distrust, even to hate, the Federal Government and systems, English-Canadians and English-Quebecers?

It is incumbent upon us, at the conclusion of Section (I), which is primarily concerned with Education in the Province of Quebec, to point out that the present Quebec Minister of Education, Jean Guy Cardinal, and his Liberal predecessor Paul Gerin-Lajoie, are graduates of the University of Montreal, Faculty of Law, where they came in daily contact with another Professor of Law, Jacques Yvan Morin of the Estates-General and Andre D'Allemagne No. 2 RIN Separatist.

Although this section is primarily concerned with unopposed statements or proposals uttered on or during those radio and television programs which come under the supervision of Public Affairs, we have found it necessary to include several news items or excerpts therefrom.

A headline in the *Montreal Gazette* of December 22nd, 1966, Page 1, reads: "Judy Defends—and Warns—The CBC Separatists." We quote the second and third self-explanatory paragraphs herewith:

"Miss LaMarsh, the Minister responsible for the corporation, told the House yesterday that 'any effort to deprive employees of the CBC French network of their right to believe in Quebec independence would amount to an attempt to prevent freedom of speech and association.'

But she warned that any separatists in the CBC must not permit their political views to colour their work for the corporation, and reminded them that they are prohibited by law from giving public support to any election candidates, or to run as candidates themselves."

On December 24th, 1966, we immediately wrote to Miss LaMarsh to point out that Rene Levesque, a "former" CBC employee, had made several recent appearances on CBC-TV, and that while he was a member of the defeated Liberal Party of Quebec he was spending more time and effort on his radio and television work than he was as an elected official; moreover, that his words sounded more like those of a separatist or an anti-Canadian.

We further reminded Miss LaMarsh that, on "This Hour Has 7 Days" on April 17, 1966, Levesque said, among other things, "We will

be the dominator—not the dominated.” He said he was taught that “that gallant gentleman, Montcalm, was defeated by British and American bandits and that, since then, there has been mismanagement, ineptitude and an arrogant attitude on one side and a feeling of inefficiency on the other.” He added “If the English looked into themselves, deep down, they would see a mixture of indifference and contempt for the French.” He admitted he is a fanatic about Quebec, but he lied about his reasons with these words “I am not a separatist, but if Canada does not change its attitude, there’s no Canada possible. Change is the rule of life; we must change or I’ll be a separatist and there will be only what’s left when Canada splits.” A neighbour in his home town said “Rene used to push English people off the sidewalk just because they were English.”

Miss LaMarsh replied on January 26th, 1967, in part as follows: “Much as I question many of the detailed assertions which you have made, I see no particular use to be served in engaging with you in an argument over any particular incident or any particular personality. In this respect, I do not think any of the matters raised by you detracts from the point which I attempted to make in the House in regard to alleged separatist infiltration of the CBC.”

In view of this reply, there was little we could do but wait for some kind of proof that the CBC—the Montreal English—not the French—CBC—were completely ignoring whatever rules and regulations had been laid down concerning this infiltration. It took some time, but finally we had three very good examples and we renewed our correspondence with Miss LaMarsh. We pointed out that, in two of the three examples, the speakers were actually CBC employees and that all of them had been introduced falsely; nevertheless, all three were willing, anxious and able to advise all Canadians that they had better become accustomed to the idea of a “separate” or an “associate state of Quebec.”

“VIEWPOINT”: On June 27th, 1967, Jean Pierre Fournier was introduced as a “freelance” writer. Note the quotes. In Part, he said:

“French-Canadian nationalism’s ultimate goal is to capture control over the nation’s economy and resources and make them serve to the fulfillment of the vast

majority of French-speaking peoples’ aspirations. Many groups, namely the French-Canadian bourgeois and possibly part of the trade union movement would settle for less. Others aim for more, that is complete secession from the rest of Canada. But I believe a regime like the one I described—akin to associate statehood—could be a common denominator.” “The current spokesman of Quebec nationalism and certainly the one who ought to be most trusted by non-Quebecers is Premier Daniel Johnson.” “Jean Marchand provides the latest example of this (anti-Canadian (French) Nationalism).” His case is all the more pathetic since he had had a long experience of provincial affairs before going into federal politics and he was generally thought to be the last man who would fall into the trap. I, for one, felt before he joined the government that he would initiate a new brand of politics in Ottawa and could become a trusted spokesman of French Canada. The deception has been great.

“Viewpoint”: On September 19th, 1967, Louis Martin was introduced as a “freelance writer for one of the local papers.” Some of his words were:

Mr. Levesque’s choice for independence is probably the most important political event in this country since what has been called “the quiet revolution” began back in 1960... The Quebec Liberal leader in Ottawa, Jean Marchand, recognizes the sociological fact of French Canada but even with his back to the wall has a wait-and-see attitude concerning its political implications. Maurice Lamontagne, the former cabinet minister now a senator, is trying to be more clever; he allows that there is a nation of French-speaking people in Canada; he says Quebec has always had a special status and then he goes on talking about the future tasks of the federal Government as if he had said nothing. . . . people like Trudeau and Marchand take a strong stand in favour of Confederation, and they will be given their match now by such a popular figure as Rene Levesque. On the other hand, we see the traditional politicians trying to fool the people. Take Mr. Levesage, asking the Union Nationale (to adopt) a common front on constitutional matters... Smile when this process of discussion and decision is all over, it’s

not altogether impossible that Quebecers will want to give English Canadians a very special status among their neighbours.

Proof that these two are separatists or lean towards separatism is contained in their words. Proof that they are in fact C.B.C. employees is contained in the C.B.C. booklet *Ici Radio Canada*, Volume 1, No. 24, September 9th to 15th, 1967, page 13, wherein it is advertised that a radio program called "L'Histoire Comme Ils L'ont Faite was "animated" by several people, two of whom were Jean Pierre Fournier and Louis Martin. Page 11 of the same issue reveals that Martin is also the animator of a radio program called "Capital et Travail." Louis Martin's name appears again in Volume 1, No. 29, October 14th to 20th, 1967, which shows that another in *L'Histoire Comme Ils L'ont Faite* was written by him, this particular program having to do with the idolization of Louis Riel, and asserting that Honore Mercier was a quasi-separatist.

In the knowledge that words have certain values and meanings, and in the belief that these values and meanings should not be changed to connote opposite or stronger or weaker expressions, we offer the following taken from *Larousse's English-French, French-English Dictionary* and from *Webster's New Intercollegiate Dictionary*:

"Animateur" translates to "animator" the verb of which is "animate".

"Animator" is defined as "an animating agent" or "inspirator" now "inspirer", the verb of which is "inspire".

"Inspire" means "to arouse".

**Senator Choquette:** Just on that point, I know a little bit of French. Let us not stretch the point too far. "Animateur" is a programmer in the radio and TV world, and *Larousse* was probably written before there was any TV or radio. You will see that "animateur" is translated all over Canada as a "programmer."

**Mr. Kingwell:** May I ask, senator, while you are most likely in a position to teach me some French, are you telling me "animateur" does not translate to "animator"?

**Senator Choquette:** It can be, but you can have fifty meanings of a word, and if you take the time to help your cause, you will

probably find that; but in the radio and TV world "animateur" in French is a programmer; that is all it is.

**Mr. Kingwell:** We have no English word for "animateur"—

**Senator Laird:** We call it "program director" in English. It is a purely technical term to anyone who knows anything about broadcasting.

**Mr. Kingwell:** Let us find out what it means. We referred to volume 1, No. 24, page 13, and it says—

**The Chairman:** I think, if it is agreeable, what happened here is that the witness has given his definition, and I think the members of the committee themselves can look at it and draw their own conclusions. We can discuss it later. I suggest that we continue. Will you continue, please?

**Mr. Kingwell:** Thank you. We submit at this point that their words tell us what Fournier and Martin are; their titles, when defined, tell us what they do. Incidentally, it has since come to our attention that Messrs. Fournier and Martin have been listed as co-hosts of the C.B.C. program "The Way It Is." Therefore, we also submit, Miss LaMarsh's warning that C.B.C. separatists must not permit their political views to colour their work is being completely ignored, and, until this writing at least—this was dated March 1, and I think it was a day or two after that Marcel Ouimet stepped on C.B.C. separatists in the French network. We will come to this in a moment—no attempts—if they have made—have been able to control the "fifth columnists" who are employed in both the English and French sections of C.B.C.-T.V. Under date of February 26th, 1968, Miss Catherine MacIver, Supervisor, Public Affairs (English), Quebec Division of the C.B.C. in Montreal, wrote to us as follows:

I should point out that while all C.B.C. services and personnel in Quebec come under the administrative direction of the Quebec Division—that is, the French network—our program direction comes from the English network's national office in Toronto."

It has taken the C.B.C. almost fifteen months to release this morsel of information.

"Viewpoint": On August 1st, 1967, Jacques Yvan Morin was introduced merely as a professor in the Faculty of Law at the Uni-

versity of Montreal. Innocent enough as were the introductions of Fournier and Martin, but Morin is also the founding president of Estates-General of French-Canada which is housed in the Université de Montreal and with whom the Quebec Liberals, the Union National and the R.I.N. parties are all working hand-in-hand with the St. Jean Baptiste Society in the development of the new constitution Quebec wants for itself and for Canada.

Here is part of what Morin had to say, and it was in connection with the de Gaulle affair:

There has also been the reaction of English Canada (to de Gaulle's words), which surprised everybody here and which tends to show that there does exist an English-speaking nation in this country, even though this nation seems to define itself mostly in opposition to the French.

This is the man who advises French Canadians that they have less freedom in a sea-to-sea Canada than they will have if and when their horizons become more restricted. Under the heading "Separatist Connection Denial Made" in the *Montreal Gazette* on January 31st, 1968, page 51, Morin made two statements. The first refers to the denial; he denies that Estates-General has any connection with a new—note that word—separatist newspaper. The second statement, when the "more freedom" reference above is recalled, is ludicrous. "The Estates-General is a vast democratic conference on Canada's constitutional future," but he added that "according to a resolution taken at the organization's annual meeting January 7, only the president is authorized to comment on news in the name of the Estates-General."—in a democratic society.

This organization was given \$60,000 by Mr. Johnson to further its development after the separatist content was well known. Mr. Johnson has slated Estates-General to be the first organization to replace Quebec's Upper House, even though its intentions are clear; get Quebec out of Canada, get the English out of Quebec.

Removing the English language from Quebec would be just as satisfactory. Governmental inconsistencies as they affect the English speaking portion of Quebec are reported below on the strength of the words used or facts revealed. Although the leaders, and some of those who aspire to be, have volun-

teered "guarantees" that the rights of the English minority will be respected, certain words and signs indicate otherwise.

(a) In his book "Quebec; Equality or Independence", Mr. Johnson says that

bold people formed a party (the National Union) which finally separated from a country-wide organization to serve the exclusive interests of Quebecers because they were split on (national) party principles.

One is supposed to gather that they are not today split on the principles in Quebec! Thus, by his own words, his party has deprived the French-Canadian from participating in some of the rights, privileges, enjoyments—and some frustrations—of being Canadian. Under the headline "Lord Trudeau says Premier Power Hungry" in the *Montreal Gazette* of 27th February, 1968, page 1, Mr. Trudeau voiced his opinion that Mr. Johnson is attempting to undermine his campaign in the current Liberal leadership race with these words:

I think this shows how afraid he is of the people of Quebec becoming interested in federal politics. If they do, then he knows that he won't be lord and master over all Quebec.

We agree that this is a political duel, but anyone who has lived in Quebec for any length of time will opine that if the French-Canadians are restricted it is the French-Canadian political leaders who are responsible.

(b) Headline, *Montreal Gazette*, February 20, 1967, page 12: "French Must Have Priority." In this article, Pierre Laporte (Liberal), former Minister of Municipal Affairs under Lesage and who is mooted to be one of Lesage's successors, said:

French language must be compulsory and bilingualism optional in Quebec.

(c) Headline, *Montreal Gazette*, April 18th, 1967, page 1: "Province Bans English Only Food Labels." While the authors of this brief believe that unilingual labels in English—and unilingual road signs in French—have no place in a bilingual province, we do strenuously object to the story under that headline, to wit:

A Government spokesman (UN) said that "for all practical purposes, the use of English in Quebec is not necessary".

(d) CBC-TV News, 11.00 P.M., Monday, September 11, 1967:

Quebec's Minister of Cultural Affairs, Jean Noel Tremblay—he who left the chamber when the Lieutenant-Governor read part of his address in English—made the following statement while addressing the French—from France—entourage of assistants, “All companies must organize under French trade names. For all purposes, the French language will become the only language and this will be accomplished by persuasion preferably, or by legislation if necessary.”

Is it feasible that a new constitution could, would, or will change this man's mind?

(e) Quebec's 25 per cent—a figure which varies almost daily—English-speaking minority contribute to the cost of the Ministry of Culture, and it is therefore reasonable to suggest that they should receive at least 25 per cent of the consideration. Yet Mr. Tremblay, in one of his first speeches to a private group, said:

French-Canadians in a department store should be encouraged to reply in French.

As a good many department store employees are French speaking, Mr. Tremblay is suggesting that if one of them is addressed in English by a customer, the French-Canadian employee should reply in French even if English is the language of the customer. I have no clipping for this.

(f) As of April, 1967, there were 106 English-speaking bilingual Montreal municipal civil servants—one Negro and one Jew included—out of a total of 21,300 employees. In a province which is demanding equality from English-Canadians all across Canada, and in a city in which approximately 54 per cent are of French descent and 46 per cent whose mother tongue is English, less than one-half of one per cent of those municipal employees have English as their first language.

**Senator Thorvaldson:** Mr. Chairman, we have gone through a lot of this and I, for one, may not be able to stay until the end. I wonder if I may say now what I would like to say?

**The Chairman:** Please do.

**Senator Thorvaldson:** This may not be in the form of a question. I realize that the footnote on page 13 was discussed at the

beginning of this submission. Nevertheless, I think there are some of us here who want to make it absolutely clear that what is called here the Quebec Conservative Party has no association whatsoever with the Progressive Conservative Party or with what used to be the Conservative Party of Quebec. There is no affiliation whatsoever between your group and the Quebec Progressive Conservatives?

**Mr. Kingwell:** I think we make that clear at the end of our notes.

**Senator Thorvaldson:** I want to doubly accentuate that, and I want to say something else, namely, that I think it is most inappropriate for any group like your own or any other to adopt such a name. I want to say that to my mind it is a form of plagiarism which I do not think should be left unchallenged.

Consequently, I want, right here, to publicly challenge the right of any group such as your own to adopt the name “Quebec Conservative Party”, but if you continue with that name I plead with you to make it very clear to the people of Canada that there is no connection whatsoever between the members of your group and the people who designate themselves by that name politically in Canada, and who are Progressive Conservatives. I want to put my position straight on that.

**Mr. Boyle:** Senator, may I answer that question?

**Senator Thorvaldson:** This is not a criticism, Mr. Boyle. I am challenging the propriety of—

**Mr. Boyle:** You raise a very valid question, and it deserves a valid answer. The word “conservative” was chosen because we wanted to conserve rather than destroy. The word “conservative” was used after we had debated the question because we were undecided what to call ourselves. We are Canadian citizens, and we are trying to bring unity to our country and to our province, and the word “conservative” came into the picture. It has absolutely no connection, directly or indirectly, or even remotely, with the national Conservative Party, or with the National Union Party in Quebec. It has absolutely no connection whatsoever. This statement was made by me publicly in the press and on the radio during our last campaign.

**Senator Thorvaldson:** I accept Mr. Boyle's statement, but at the same time I do not retract one word when I say that it is most

inappropriate that this name should be used, because these people must know how easy it is to confuse this group with the Progressive Conservative Party of Quebec and of Canada.

**The Chairman:** I quite understand Senator Thorvaldson's point because he was, I believe, at one time the president of the national Progressive Conservative Party. However, I think Mr. Kingwell and Mr. Boyle have made their position clear, although it was quite correct and proper for you, senator, to make your position clear.

**Senator Thorvaldson:** Thank you.

**The Chairman:** However, I do not know that this committee is in a position to take any action concerning whether they have the right to use the name, which I understand they have used during an election campaign in the Province of Quebec.

**Mr. Boyle:** Actually, just on another note, senator, the National Conservative Party and its name caused us some embarrassment as well.

**Senator Thorvaldson:** I do not know how you can claim that the name of our party caused you any embarrassment.

**The Chairman:** With all due respect, honourable senators and gentlemen, we have a brief before us which is supposed to be dealing with Bill S-5, and I am wondering what relevancy to the bill this discussion has, whether they have the right to use the name or not, for that is not something we can discuss at length in this committee, surely. At any rate, the points have been made and with your permission I would suggest that we continue.

**Mr. Kingwell:** Recently advertisements for new employees have been appearing in the French language in English newspapers in which bilingualism is not—repeat not—a requirement. The sponsors of the ad were Hydro-Quebec and City of Montreal!

- (g) CBC-TV News, 11.22 P.M. February 29th and 6.40 P.M. March 1st, 1968 (Montreal Segments). Mr. Frank Vatrano, Principal of the Tara Hall School in Montreal revealed that Italian parents who wish to educate their children in English high schools have been refused. When he objected to the Regional Board, he was told in effect "Why should we worry

about the Italians? They only grow up to be title-layers, truck-drivers and construction workers!"

- (h) While it is too lengthy to detail here, the new system of Regional School Boards in the Outremont-Town of Mount Royal-Park Extension Area of Montreal effected changes which would be conducted in three stages. English Catholic students from Town of Mount Royal Catholic High School would be transferred to a school in Outremont. French girl students from Outremont would be transferred to Mount Royal Catholic High, and French boy students from Outremont would be transferred to the school the girls had vacated, all of this being done while a 1,500 student high school would be erected in the Park Extension area. Well, the T.M.R. Catholic High School will be vacated by T.M.R. Boys, replaced by Outremont Girls, but it now develops that the French Outremont Boys will not be moving from their premises after all. T.M.R. Catholic parents are now, as of the end of February this year, being told that they will have to send their children to the T.M.R. Protestant High School, which can only accommodate the 8th Grade Students. In the meantime, the land for the new school is not available, nor will the building be erected in time for the 1968-69 School Year! In 1968-69, all tuition in TMR Catholic high schools will be in French!

From the above it will be seen that the anti-English affinity in the Liberal and National Union parties, the personnel offices of the civil services and the school boards is incontrovertible. While our informants have our word that they will remain anonymous, we are told that the same signs are beginning to show in the Federal Civil Service in Montreal, notably in the Manpower Department and the Income Tax Department.

According to the Montreal Gazette of January 30th, 1968, Page 1, Mr. Johnson remarked, as he has on other occasions, "The Head Office of French Canada will always be in Quebec." Recent articles have reported that Quebec is sending French text-books to French-Canadian outposts in New Brunswick, Manitoba, etc., as well as forwarding funds to certain Franco-American institutions in the United States. If the text-books are Canadian history books do they contain the question which indicates that "the only answer for

Quebec, and the rest of the French-Canadians, is independence", as outlined on Page 4, Item 13, Section (I) of this brief?

The individuals and groups, even governments, in Canada who have assumed the task of protecting the rights of French-Canadians cannot be praised too highly. Perhaps Premiers Robarts, Thatcher and Smallwood provide the best examples of Canadians who are exerting themselves to make French-Canadians feel at home outside the Province of Quebec, and they deserve acclaim and respect for this endeavour alone.

But, in the light of the foregoing and the following submissions in this brief, who has undertaken or will undertake the protection of the English speaking native Quebecer who does not wish to surrender his language or his rights and who believes that these heritages should not even be threatened?

In Montreal, the CBC has two television outlets—one for the French-Canadians on Channel 2 whose call letters are CBFT, and one for the English-Canadians on Channel 6, whose call letters are CBMT. The program "Viewpoint", referred to earlier, is telecast over the English channel at 11.17 P.M., Monday through Friday, separating the National News from the local news. As a veteran viewer of this program, and one of the co-signers of this Brief I became aware of a certain pattern whenever the program originates from Montreal:

- (I) the speakers are rarely members of the English-speaking community;
- (II) they are always either "free-lance writers or authors" or "professors of this, that, or the other thing" mostly from the University of Montreal, rarely from McGill University and never from the business world;
- (III) their topics are political, and usually concern the manner in which Ottawa turns deaf ears to Quebec's demands, or the problems Quebec politicians have in their dealings with the Federal Government.

From the above, the rest of Canada must think there are no English-speaking Quebecers; that, if there are, none is intelligent enough to comment on the events of the day; that the ordinary French or English speaking businessman is a dodo who is either too tired from his day's endeavours or is too busy frequenting the "topless dancer" discotheques to

offer his opinions; or that the only phenomenon worth discussing is politics and that only the French-Canadian is conversant with the subject.

We wrote to the Director of Public Affairs of the CBC in Montreal many times, beginning during the 1966 elections on what seemed to be a rather unfair practice: all other political parties were receiving free time, but the Quebec Conservative Party was not. Their reply was that a national party had to have 27 candidates and a provincial party 10 candidates in order to qualify for the title "political party" and to receive free and equal time. We objected, but to no avail.

However, on Montreal CBC-TV News at 11.00 P.M., February 5th, 1968, Gerald MacDuff, the reporter assigned to the Quebec Legislative Assembly by the CBC said in effect "the unusual amount of free publicity given to Rene Levesque and his political movement was causing some concern to the Quebec Provincial Government." The important words bear repeating "unusual amount of free publicity"—"political movement."

So now we have a clearer picture. During an election campaign, a political party with less than 10 candidates could not get any free publicity, while the efforts of ONE MAN who is only in the process of forming a movement—an embryo—dedicated to the separation of Quebec, has been and is being given what is now acknowledged as an unusual amount of free publicity on the CBC; decidedly more than he has received on the CTV, a privately owned English speaking Corporation.

On February 6th, 1968, we again wrote to the CBC to ask how it was possible to reconcile the refusal of exposure of a political party with the over-exposure of one man who has not yet formed a party. We have already reported on Miss MacIver's partial answer. The balance of that letter says, "I cannot take the time and space to reply to you in detail". We have maintained that the spirit and the letter of "Justice For All" demands that they allow both sides to speak and be heard, or that neither side get a hearing. You could say we were writing to people who could not read, talking to people who could not hear, but perhaps it would be more honest to say that we, Canadians, were addressing anti-Canadians employed in the CBC.

We are not alone, at least not as of March 1st, 1968. In the *Montreal Gazette*, Page 10 of

that date, Radio and TV Columnist Bernard Dube headlined his remarks "Soundings On the Unquiet Revolution" in which he points out that on a recent CBC program Levesque, Jacques Yvan Morin and others had another opportunity to air their separatist views. He, whose job it is to assess programs for his employer and the public at large, says: "I'm not sure that documentaries purporting to probe the unquiet or quiet revolution, whatever you want to call it, are all that useful when the 'revolution' is looked at only from inside Quebec, when only the opinions of French-Canadians are sought, as this program mostly did." He could have been writing about "Viewpoint" but he was not; he could have been writing for this brief, but he was not; it might be supposed that we somehow managed to get him to pen these remarks, but we did not. It has finally dawned on him "a lot of those opinions, on both sides of the main argument, are not being tested by rebuttal, are not being pinned down to their core". We became aware of it in 1966; how long prior to that had this insidiousness been in operation?

It therefore appears that the CBC Montreal English segment is a haven for separatists and their views. This is the cause of the concern of the Provincial Government and this is the reason Mr. Johnson has decided to resurrect a 1945 piece of legislation which will legalize the entry of the Government of Quebec into the field, in this instance under the guise of "educational" TV. It is acknowledged in Quebec that if Mr. Johnson is not a separatist, he is as close to one as anybody can be, and unless his Government has the means to reach the ears of French Quebec, he will be unseated by Rene Levesque.

Under the headline "Radio Quebec Step Closer" on Page 2 of the Montreal Gazette of February 21st, 1968, a spokesman said that "the creation of such a bureau would have the effect, to all intents and purposes, of preventing the Federal Office from operating in Quebec. The spokesman explained that the next steps would be to obtain broadcasting permits from the Board of Broadcast Governors and to get the Federal Government to turn over to Quebec the funds which would have gone into the federal office's Quebec Bureau. And, the spokesman said "the 'position of power' which the creation of such a Quebec bureau would give the province could also be used as a lever to force the Federal Government into letting Quebec have representatives on the Board of Broadcast

Governors and the Canadian Broadcasting Corporation!" Nowhere does he say that the Federal Government would or could have any voice or place in the Quebec bureau!

On Pages 1 and 4 of the Montreal Gazette of February 23rd, 1968, under the headline "Quebec Radio-TV Launched", the following items appear. "The Quebec Bureau may acquire, by private agreement or expropriation any private radio broadcasting station in operation: acquire the copyright of any historical, scientific, literary or artistic work and of any phonographic records, sound films, news items and other matter: acquire and utilize any patent or invention, permit or concession (or anti-Canadian propaganda?) deemed advantageous." It goes on ad nauseam. If names like Goebbels, Castro, Mao Tse Tung etc., come to mind in this connection, it is quite believable to Quebecers in this year of 1968. We earnestly pray that all Canada believes it before it is too late!

In the same article mentioned above, Mr. Johnson himself is quoted, as follows: "In this way, Quebec takes another step toward the full exercise of its exclusive rights in the field of education." If that education is to be oriented in the same manner in which Canadian History in French-speaking schools is oriented, or if the English Quebecers are to be treated in the way that the students of Tara Hall School or the Town of Mount Royal Catholic High are being handled, the Province of Quebec is on the threshold of the point of no return.

Perhaps it would be pertinent to include in this Section a quotation from "TV Guide" for the week February 24th to March 1st, 1968. The cover's first words are "How TV Is Changing Us"; the author is Russel Lynes, Managing and Contributing Editor of Harper's Magazine; his article is entitled "The Electronic Express", the last paragraph of which could have been written expressly for this brief because of its timeliness.

"Any means of communication is considered dangerous by a great many people who believe that the transmission of any ideas but their own is dangerous. To these timid people television must be the most frightening medium of all. To some of the rest of us it is the most promising. At its best it informs, instructs, enlightens, entertains and, above all, transports. It moves people, it moves places and ideas, and in a democratic and intensely mobile society like ours, what better

service could it conceivably perform, and what medium could conceivably perform it better?"

The most important words in that quotation, we submit, are "democratic society". But what if the society is not democratic, or is on the verge of losing whatever democracy it had? How priceless would such a medium be to those with ulterior motives?

A kind of metamorphosis is taking place in Quebec today. From 1960 to late 1966 or early 1967, the hate, inbred and taught from pulpit, platform, and microphone was all one-sided. Now that radio and TV carry words just skirting sedition, the danger now lies in the possibility of the realization of the adage "Sow the wind and you will reap the whirlwind" whereby the traditional hater will become the hated. Simply stated, it is becoming increasingly more and more difficult for English-Quebecers to maintain any semblance of an objective attitude towards the French-speaking political leaders, intellectuals and rabble-rousers.

It is in this connection also that the diagnosis nauseates us and the prognosis is abhorrent because, while nationalism may be a legitimate feeling on the part of some French-Canadians, the dividing line between nationalism and separatism is the same as that defined between love and hate, genius and mania, and it is sometimes difficult to distinguish whether a proponent is speaking as a nationalist, as a French-Canadian separatist, or as an admirer, or more, of communism. The RIN separatists are in the throes of just such a conflict now, the results of which will not be known until the end of March. However, this division in their ranks did not stop them from shouting "re-vo-lu-tion" and "maudits anglais" during the riot they caused on February 28th 1968 in the Town of Mount Royal, supposedly in support of 106 strikers of the 7 Up Company. We cannot resist mentioning here that while the CBC evidently thinks that Negro bomb-throwers in Detroit, Newark, Watts, etc., etc., are of interest to Canadians, the riot just described was not worth showing on any National News TV program since that date!

On Page 2, we referred to the possible division of Canada or even of Quebec. We are duty bound to point out that the situation for all of Canada is very grave at this moment, and to stress that if present trends continue the world is sure to see an East and West

Canada, Fleur de Lis and Maple Leaf Quebec, or a metaphoric or figurative return to the womb of Upper and Lower Canada! "Cuba Of The North" or "Red Quebec" might be passé—besides it will put the Americans on guard—but "Quebec Libre" would be quite acceptable because the true motivation could still be camouflaged.

On July 25th, 1967, Charles de Gaulle gave international recognition to a Canadian national problem when he uttered his infamous words. This is the same de Gaulle who pulled French troops out of Vietnam because, for various reasons, they could not complete the task assigned to them. No matter who the separatists are in Vietnam—the North Vietnamese, the Viet Cong, or the National Liberation Front—his country's involvement in that area gave him first-hand knowledge of the problems to be encountered once they have established a foot-hold.

It was not surprising, therefore, to hear on the 6.30 P.M. CBC-TV News on February 20th, 1968, that "Seventeen separatists on the Island of Guadeloupe had been arrested and taken to Paris for trial because they are alleged to have agitated for the independence of that island from French rule." There are those—and we confess that we qualify—who were tempted to say "It serves him right", but a more objective point of view suggests that he took the only course of action to protect Metropolitan France or any of its departments or protectorates from any activity which would or could cause dissension among the people concerned.

Newton's Second Law of Motion defines action and reaction. Compare De Gaulle's reactions towards his separatists, with the reactions of those who believe in a bilingual Canada, or at least who believe in a ten-province country in which the citizens are entitled to live peacefully, and yet who have done absolutely nothing to protect the country from the danger within for fear that they will become martyrs like Riel and Papineau. If it should ever come to pass that Canadians are at the mercy of the militant separatists, does anyone here honestly suggest that this courtesy will be reciprocated?

In this brief, we have attempted to show that some of the dangers within rest squarely on the shoulders of separatist and separatist-leaning teachers and professors who teach distorted versions of Canadian History, and who tell their students that independence is

the only answer for Quebec. We have quoted the words and described the actions of some Quebec political leaders who have badgered and insulted English-speaking Quebecers seemingly at almost every opportunity since at least 1966, and although we have not included any evidence to prove where they have shown their disdain for Canadian diplomatic protocol, the record is there—and all in the interests of supra-nationalism. We have shown instances where the Federal Government's authority has been superseded by separatists or separatist-leaners in the Canadian Broadcasting Corporation's Montreal English section, some of whom devote extra time to editorial columns of French-speaking newspapers from the ivory towers of which they subversively or straightforwardly attack the patriotism of French-speaking Canadians.

Both briefs contend that the situation extant in Quebec, as well as the activities which accompany it, is directly or indirectly attributable to the system of education, the breed of educators and their supervisors, as well as Quebec's Department of Education itself.

We cannot conclude without reference to our position on the subject matter, so that any possible misunderstanding may be averted. Many of our members, French and English, served Canada in its time of need during World War II and are convinced we are serving Canada in the presentation of this brief. Recent television news items indicate that the United States is gearing itself for the threatened race riots forecast by some Negro leaders; some gloomy analysts who are nevertheless perceptive see a Black and White politically divided America. American authorities are now, after many riots and deaths, taking steps to alleviate the cause. Only time will tell if they will be successful. Will Canadian authorities wait as long as American authorities have waited, even though our situation is just as perilous?

If I may speak on a personal level, I wish to say that I had French-Canadian relatives before marriage, and acquired more after marriage to a French-Canadian girl. I could not in all conscience, therefore, be a party to an organization or group who would believe in, or who would engage in any anti-French-Canadian activities or against people who are no more to blame for the present conditions in Quebec as I am. We are all victims of people—who also happen to be French-

Canadians—some politicians, some intellectuals, some newspapermen, some teachers, some broadcasters, etc., who are either power-hungry, chauvinistic, or seeking revenge for a lost battle and who are in a position from which they can falsely claim to be speaking for all French-Canadians in Quebec. We know they lie; we know they do not represent the majority of French-Canadians, because we know that the average French-Canadian resembles his English-Canadian counterpart whose only desires are a peaceful life, the right to go anywhere in Canada unmolested and respected, the understanding which is a necessity between neighbours, the right to practice—or not to practice—the religion of his choice, the right to educate his children as he—not the government—wants them to be educated, and a decent livelihood for himself and his family. And I must in all honesty point out that while it was not patriotism—pure patriotism—which prompted me to don a uniform from 1940 to 1946, it is patriotism which prompts my participation in the submission of this brief.

The use of free speech, and the right to it, is inviolable and is perhaps the most important feature in all phases of man's progress. But if intemperateness has not lost its meaning and implications, the excessive and violent use of free speech could mean the loss of all freedoms including that of free speech and whatever calamities would attend such a catastrophe, not the least of which would be hatred for one's neighbour for reasons of colour, race, ethnic origin, religious belief, or political orientation.

In the fervent hope that Canada and Canadians can find the way to protect our most precious asset—the younger generation of Canada—this brief is respectfully submitted.

**The Chairman:** Thank you. Honourable senators, you have heard the brief. Are there any questions?

**Senator Carter:** Mr. Kingwell, you seem to be very interested in education and schools. Are you a teacher?

**Mr. Kingwell:** No, sir.

**Senator Carter:** What is your occupation?

**Mr. Kingwell:** I am general manager of the Veterans' Co-operative Contracting in Montreal, a housecleaning and painting company.

**Senator Choquette:** Since our discussion about the term "*animateur*" I have sent for a translator and French reporter of the Senate. The gentleman to my right, Senator Laird, is interested in radio and TV. The true translation in the radio and TV world is "moderator," so you certainly stretched your imagination in the definition you give on page 7.

**Mr. Kingwell:** Of course, there are always misunderstandings when you start to translate. As a matter of fact, you do not have to translate to have misunderstandings.

**Senator Choquette:** Who translated the name of your group Quebec Conservative Party to *Parti Conservatif Quebecois*? Does the word exist?

**Mr. Kingwell:** It is perfectly legitimate according to Larousse.

**Senator Choquette:** You do not translate it with "*conservateur*"?

**Mr. Kingwell:** I would like to answer Senator Thorvaldson at the same time about the use of the word "*conservatif*". This is not the first time we have been asked why we chose "Conservative". We put "Quebec" in front of it to denote the difference with the Progressive Conservatives, and we put "*Conservatif*" to denote the difference from "*conservateur*."

**Senator Choquette:** Where is the hate literature? Where does it come into this committee?

**Mr. Kingwell:** What question would you like to ask me, senator? I have given you the references as I read the brief.

**The Chairman:** This committee is concerned solely with Bill S-5, which has to do with certain amendments proposed to the Criminal Code for the purpose of making it an offence to speak certain types of words in certain circumstances or publish certain types of statements under certain circumstances. Obviously you have gone to a great deal of trouble to document a case which you want to make here, but I am wondering what is the relevance of your case to the matter before this committee. I could see the relevance if we were an education committee, and I could see the relevance perhaps even if we were a broadcasting committee, but I have not yet seen its relevance to the matter before this committee. What are you suggesting we should do? What we are concerned with is having people tell us where this particular legislation in front of us meets or does not meet the problem.

**Mr. Kingwell:** You refer to educators or a group of educators. Would a group of citizens qualify who feel that living under certain pressures—

**The Chairman:** There is no objection at all to your coming to this committee. You misunderstand me.

**Mr. Kingwell:** No, there is no misunderstanding.

**The Chairman:** You have made your presentation but our problem now is to apply the presentation you have made to the problem with which we have been charged to deal. You have outlined a situation which you say exists in the Province of Quebec. Now, in what way does this legislation give you any comfort, or does it cause you any discomfort? Does this legislation provide a solution to the problems about which you speak?

**Mr. Kingwell:** Not that I can see.

**The Chairman:** Could it be a means of making your problem more difficult?

**Mr. Kingwell:** It was my understanding that this committee was sitting in the hope or with the idea of forming legislation which would permit any Canadian anywhere in Canada to go wherever he wanted and to speak one of the two languages of the country without fear of—what shall I say?—discrimination.

**Senator Laird:** Have you read Bill S-5?

**Mr. Kingwell:** I read it over quickly. I only saw it this afternoon.

**Senator Roebuck:** Might I be specific and ask this question? Perhaps the broadest section of the bill is section 267B subsection (2):

Every one who, by communicating statements, wilfully promotes hatred or contempt against any identifiable group is guilty of...

And so on. Do you suggest that any of those you have mentioned, either individuals or groups, have communicated statements which wilfully promote hatred or contempt against another identifiable group.

**Mr. Kingwell:** Yes, sir, most decidedly.

**Senator Roebuck:** You are satisfied that the language of the bill is sufficient for your purposes?

**Mr. Kingwell:** Well, Senator Roebuck, I put it to you this way: If you live in a community

and you are of certain group and a certain number of people are legislating so that your culture and religion—I understand religion is barred from this particular meeting.

**The Chairman:** It doesn't have to be.

**Mr. Kingwell:** Not barred, but it doesn't come under these matters which are to be given consideration.

**The Chairman:** One of the matters we have to consider is whether religion should be included.

**Mr. Kingwell:** I would hope you could resort to some legislative body of some sort which could prevent this sort of thing from going further so that you could have a real program. And, secondly, so that you could at least make your views known to certain people, again to those in authority and who would be able to say at least "There is a segment of this country that is not happy because we are hearing one thing from the legislators of Quebec and the people of Quebec are hearing something else". That is the fact of life in Quebec today.

**Senator Choquette:** Are we going to legislate against people who express these views? Are we going to legislate against and prosecute people like Johnson and Rene Levesque and are we going to legislate against the RIN? Is that what you want?

**Mr. Kingwell:** If the RIN wants to run on a political platform, that is all right, but if it is going on a platform of hatred for the English-speaking people of Quebec, then don't let it run.

**Senator Roebuck:** Perhaps you will have something to say about "identifiable group" as it is defined in subclause (4)(b) of clause 1, where it says:

"identifiable group" means any section of the public distinguished by colour, race or ethnic origin; and ...

Now, as the chairman has just said, we are considering whether we should include religion as well as these. Would you say that the English-speaking people of Quebec are an identifiable group and if not what would you suggest by way of change or amendment to this definition?

**Mr. Kingwell:** I think that if I were in a position to advise you how you should go

about this, then you would be submitting a petition to me. I am not trying to be sarcastic.

**Senator Roebuck:** Neither am I. We are simply getting down to business.

**Mr. Kingwell:** My answer is I am going to people who have the power to legislate, people who can more objectively consider if a political party is running on the basis that "We will get rid of the English language in Quebec." This is not the way to run a political party nor is it the way to make the people of that language feel at home in that province.

**Senator Roebuck:** I wonder if you say whether the material you have read before us does express hatred and, secondly, whether it expresses hatred against an identifiable group.

**Mr. Kingwell:** May I read what Professor Morin tells us at a seminar at the university:

He told the students they shouldn't be deluded into thinking that "it will be sufficient to favor the teaching of French in Ontario and Manitoba for Quebec's demands to be satisfied"...

Quebecers don't wish to abandon the French Canadians in other provinces, he said, but their own survival is dependent on a radical change in Quebec's constitutional status.

During his speech, Prof. Morin made several references to the history of Canada and Quebec, saying that the English can no longer take advantage of the sheepish indolence French Canadians have demonstrated in the past.

There is more about this fellow here.

**The Chairman:** Mr. Kingwell, am I correct in coming to this assumption? In your brief you have documented what you believe to be a number of instances which lead you to believe that there are elements in Quebec which are teaching people in Quebec that they must hate the English.

**Mr. Boyle:** Minority groups.

**The Chairman:** That is hate as distinct from a political division?

**Mr. Kingwell:** Most decidedly so.

**The Chairman:** You are asking us as legislators with this information before us and

presumably having the particular skills necessary to write legislation to make it illegal for people to do these things or to control it?

**Mr. Boyle:** To control it. May I make a remark at this point? Perhaps the leader, Senator Choquette—I presume he is from my province.

**Senator Choquette:** I am from Ontario.

**Mr. Boyle:** Originally perhaps from Quebec. May I make this statement? My family history goes back into my province 250 years. I believe profoundly that there is but one race and that is the human race, and that in this human race we are all Canadians, and we must respect the other fellow's point of view but we cannot ever preach hatred. We cannot ever preach hatred to distrust and to destroy the confidence of one towards the other. The purpose of our coming here is to try to bring to public attention not only to the position in our province but to the rest of our fellow Canadians from coast to coast that what has happened in Quebec could happen in another province in another manner. That is our purpose today before you honourable gentlemen, and I must say that it is an honour for me to appear at this committee here. The brief has been prepared well and it has been done very thoroughly. We could have spent much longer on this but there is no animosity nor hatred in our hearts for any citizen regardless of his race, colour or creed, and this I wish to impress upon all of you honourable gentlemen.

**Mr. Kingwell:** Just to add a little to what Mr. Boyle has said, and I feel I can explain it even better than that, Senator Choquette. I had French relatives before marriage; I married a French Canadian girl and got French relatives from that, but more important while my name is Kingwell, it is an adopted name. My real name is Paul-Émile Thibodeau. My father is French Canadian and I don't know of any situation which can be more French Canadian than that.

**Senator Choquette:** I don't see the point of this at all.

**Mr. Kingwell:** I thought I saw something shining through that I was anti-French. If I may read some more of Mr. Morin's guff, because that is what it is. The delegates are going there and they are hearing this man. You're got to be there to see it. It is all very well to look over from this side of the river and say "Well, that is the Province of Que-

bec. It won't happen here." But it is happening here. It is happening now. I have heard people who say that there is no difference between us and the people in the United States and that it is only the presence of the French element that keeps us from being part of the United States. I say there is no need for Quebec to keep us from being American. I don't believe in that at all.

5. No English should be taught at the primary level except in English minority schools; the teaching of a second tongue in High School be voluntary; and English municipal councils and school commissions could be allowed to use English in addition to French for a short period of adaptation.

6. Quebec should exercise powers in matters concerning migratory movements of citizens of Quebec, should help prevent the English assimilation of French-Canadians outside Quebec, and should establish French unilingualism in Quebec.

I am not surrendering my language to him or anyone else.

**Senator Choquette:** Do you know how many years the reverse of that went on in the nine other provinces?

**Mr. Kingwell:** No, I do not.

**Senator Choquette:** Do you know, in the nine other provinces outside Quebec English only was taught in the schools, and the French-speaking people and Catholics had to have their separate schools? It is only recently that we are trying to find a way to give these people equality.

**Mr. Kingwell:** It is only since the B. and B. report that this has been written.

**Senator Choquette:** I have never heard English people complain about the treatment they have received, because the request was always made by French-Canadians in other provinces, "Treat us at least as Quebec treats the English minority." Do you agree that until 1966 you were well treated, and you still are, and these people are not going to change the whole attitude of the French-Canadians to the English element?

**Mr. Kingwell:** No one is asking them to change their language, but we are certainly looking for someone who can assist in the changing of the attitude where tolerance is being turned into hate. If you have a commit-

tee that sits on hate dissemination against any particular group, and we represent a group that claims hatred is boiling or building in Quebec, somebody has to listen. We cannot go to Quebec and tell them that. You write letters to them and they ignore you, they do not give you the courtesy of a reply.

**Senator Roebuck:** Do you claim the English-speaking people of Quebec fall into this category: colour—are they a group distinguished by colour, by race or ethnic origin?

**Mr. Kingwell:** Do you call English origin an ethnic origin? Do you call English race a race origin? There are some weird descriptions of “race” in the dictionary; it does not always mean colour.

**The Chairman:** Senator Roebuck asked you a very specific question. We are dealing with...

**Mr. Kingwell:** Maybe I misunderstood him.

**The Chairman:** I think you did. He asked you this. We have certain legislation which says, for example:

Every one who, by communicating statements, wilfully promotes hatred or contempt against any identifiable group is guilty of...

etcetera.

**Mr. Kingwell:** Yes.

**The Chairman:** I gather that you feel some of these people have been wilfully promoting hatred and contempt of the English-speaking group in Quebec?

**Mr. Kingwell:** Decidedly.

**Mr. Boyle:** Let us qualify it. I think this is what the senator is trying to find out. When we are talking about the English group we are talking about the non-French group, which includes Italians, Jews, Greeks, Ukrainians. This is this non-French group of which we represent 46 per cent in the Montreal area.

**The Chairman:** That is an ethnic group, and you could group the bunch of them in there; it would be a number of groups.

**Mr. Boyle:** Yes.

**Senator Roebuck:** That is a partial answer. We have a specific act before us that we are considering. It is not that I am in opposition, in any way, to what you are laying before us...

**Mr. Kingwell:** No, I realize that.

**Senator Roebuck:** What I am trying to do is to make it specific, something that we can consider. I have asked you whether this definition of an identifiable group is sufficiently wide for your purposes; that is all.

**Mr. Kingwell:** Of course, we have suggested there, somewhere in this brief, it is very clear what we are suggesting; but whether or not the committee has priority over certain rights the province may have, the whole thing hinges upon this, I think. Education is a provincial right.

**The Chairman:** That is correct.

**Mr. Kingwell:** Right?

**Senator Roebuck:** Yes.

**Mr. Kingwell:** Hate legislation is a federal right.

**The Chairman:** Within certain limits.

**Mr. Kingwell:** Yes, within certain limits.

**Senator Roebuck:** And education within certain limits too. I was waiting to see if somebody would define “education”.

**Mr. Kingwell:** TV is education, for that matter.

**Senator Roebuck:** Not everything it does.

**Mr. Kingwell:** No, not everything, but it is for educational purposes that provincial radio and TV is launched; it is not to praise the federal Government, sir.

**The Chairman:** There are two respects, I think, in which your brief may be of value to the committee. First of all, you lay before us certain matters you say are evidence that certain groups in Quebec are being subjected to a barrage which, if it is not hate now, will result in hate.

**Mr. Kingwell:** That is right, sir.

**The Chairman:** This is the type of thing we want to try to eliminate in Canada, if we can. Senator Roebuck's question was: “Identifiable group” here, is that large enough to provide a group which can be given protection, if it is felt that protection is necessary?—in other words, if the discussions that go on step over the bounds that are necessary for the proper discussion of a matter of public importance.

**Mr. Boyle:** A question that could arise now, senator, is this. The bill you have before you,

the one I have seen and read, answers to a degree the qualities that we are looking for in such a bill, but I also believe that this present Government has introduced a bill of rights which I think would augment this particular bill, and I think this then would be the answer to the problem.

Our problem is this—and we spell it out very clearly—that we love our citizens in Quebec as brothers—we grew up with them, we played with them, we married them—but there are only a handful of people who are agitating the others into violence, and these are the ones we want stopped immediately, through the control that the authority of Ottawa has in the C.B.C.

**The Chairman:** But that is not something that we have anything to do with in this committee.

**Mr. Boyle:** Could not you recommend it?

**The Chairman:** We can make this material available to the C.B.C., as you can yourself. We can make this material to the Minister of Justice, I presume.

**Mr. Kingwell:** He tells us it is not his department.

**The Chairman:** We can make it available to the minister who will be in charge of the C.B.C., the Secretary of State. However, we are not dealing with the whole, wide problem and every problem that faces every Canadian, in this committee. We are unfortunately limited in our terms of reference, by which we were set up, to deal with the elimination of hate literature without unduly interfering with freedom of speech in proper areas.

**Mr. Kingwell:** May I ask you a question, senator, that might tie in with the comments you have made? You mentioned in conversations in your office that you served overseas. Have you ever thought yourself that it was strange the Jews had no objections to make in Germany about was happening prior to the war? Has that never entered your head?

**Senator Roebuck:** They were a clearly identifiable group.

**Mr. Kingwell:** Are not the English-Canadians in Quebec a clearly identifiable group? We have an educational system that says we are; we have a court system that says we are.

**Senator Roebuck:** That is my question to you. I did not express an opinion. But you did bring out there were other groups as well, such as the Italians.

**Mr. Kingwell:** When we say English-speaking, I should also make it clear we are speaking about anybody who is not French-speaking, or who is non-French.

**The Chairman:** You are including them as English-speaking Canadians?

**Mr. Kingwell:** The whole group.

**The Chairman:** It is perhaps what worries the French at the present time.

**Mr. Kingwell:** I see.

**Senator O'Leary (Antigonish-Guysborough):** May I ask one question, Mr. Chairman?

**The Chairman:** Yes.

**Senator O'Leary (Antigonish-Guysborough):** Has your group at any time presented any material to the B. and B. Commission?

**Mr. Kingwell:** To the B. and B. Commission? No, sir, because prior to that—not prior to that, but during the time that the B. and B. Commission was listening to briefs in Montreal we felt that those who would be concerned, or who should be concerned, as we were—but, we were not a group then. That is another item that you have to bear in mind.

**Senator Choquette:** How many are there in your group? How do you qualify yourselves? Do you sell tickets?

**Mr. Kingwell:** No, sir. When we have a group like this in a room we will make a charge. We will put out our hands and ask them for money.

**The Chairman:** How many candidates did you run in the last election?

**Mr. Kingwell:** Six.

**The Chairman:** How many votes did they get in total?

**Mr. Kingwell:** I got 1,318 which, running for the first time, I thought was pretty good.

**Mr. Boyle:** I think I got close to about 3,000.

**Mr. Kingwell:** And Luke Doherty got another 2,000 or 3,000. The surprising thing is that the one French Canadian we had in the group, Roger Millette, got 600 votes in Westmount, and he was preaching Confederation and nothing else. He was not talking English or French, but Confederation.

**Senator Choquette:** Is not Westmount preponderantly English?

**Mr. Kingwell:** No, it is English and French.

**Mr. Boyle:** It is about 50-50 now.

**Senator Bourque:** Mr. Kingwell, you have mentioned the Saint-Jean-Baptiste Society. Are you claiming that the English population is not properly treated in the schools in Quebec?

**Mr. Kingwell:** No, I am not stating that at all, sir. I am saying...

**Senator Bourque:** That is all I want to know.

**Mr. Boyle:** There is another area too, where improvement is very much needed. Of course, the B.N.A. Act gives to the province a bilingual character. Both languages are official. The school systems, both Catholic and Protestant, are there. The language of Parliament, the Exchequer Court and the Supreme Court is English and French. There is no question in our minds at all but that the British North America Act must be changed. It must be changed in 1968, and the sooner it is changed the better we will be as a nation and as Canadians. This is what we are suggesting. We are trying to advocate this in every possible manner.

You asked a question a little while ago, and I will say that this preparation cost of us a couple of hundred dollars and God knows how many hours of time. This came from our individual pockets. Any brief which we have to prepare for any other organization costs money, and we do not have it. If this committee would get together and give us a sum of money we would present briefs all over the place.

**The Chairman:** We do not have sums of money for ourselves.

**Mr. Kingwell:** Senator Choquette, the Saint-Jean-Baptiste Society in Montreal is lovey-dovey with the Government, whether it be Liberal or National Union. They are the favourite sons. Now, I would like to read certain sections of what the Saint-Jean-Baptiste Society wants the Government to impose in Quebec. First, it wants official unilingualism in Quebec and in the Ottawa River area. All documents, coming directly or indirectly from the Government should be in French, with English copies only on request.

All municipal business would also be carried out in French exclusively—although a transitional period would be allowed for Montreal and the Ottawa River region. Dur-

ing this transition period, French would be the priority language, but English could also be used. This delay, they say, should be considered as a temporary privilege, accorded by a generous majority to a minority.

Immigration would be controlled solely by Quebec, and "each immigrant to Quebec must be advised when he enters that he has chosen a French-speaking state."

In communications, their brief speaks of the "Canadian" atmosphere in the press, radio and television which "contributes daily to the poisoning (there's a word) of the French-Canadian spirit."

In English-language newspapers, a certain number of columns, including the editorials, would have to be printed in French. The number of radio stations broadcasting in English would be strictly controlled.

In a move to force English-speaking journalists to learn French, members of the Government and the Montreal city council could refuse to provide statements or interviews in English.

English jurisdiction over any part of the school system would cease instantly.

Diplomas at the secondary level and above would be given only if English-speaking students meet a level of written and oral French comparable to students in French schools.

**Senator Choquette:** There are recommendations from a society, but do you know that what they are recommending now—

**Mr. Kingwell:** Well—

**Senator Choquette:** Just a minute. Do you know that what they are recommending now has existed for over 100 years in Ontario and all the other provinces? In the whole Province of Ontario there are 600,000 French Canadians, yet there is only one newspaper written in French by French people. You could not write a letter at one time to the Legislature of Ontario—and here is a former attorney general of Ontario who can confirm this—in the French language and hope to receive a reply. I doubt whether they had three French Canadians on the staff of the legislature at the time I studied law in Toronto. Nobody ever complained. You are the first English-speaking organization that has come to Parliament here and told us that the poor English people in Quebec are fearful of being...

**Mr. Kingwell:** Oh, come on, senator!

**Senator Choquette:** ... persecuted.

**Mr. Kingwell:** Senator ...

**The Chairman:** May I ask you a question, Mr. Kingwell? Where you able to watch the Robarts Conference, and then the Federal-Provincial Conference, on television recently?

**Mr. Kingwell:** Yes, sir.

**The Chairman:** Do you remember Premier Manning of Alberta?

**Mr. Kingwell:** Yes, sir.

**The Chairman:** If you were a French-speaking citizen living in a French-speaking community in Alberta—a community in which French is spoken—would you feel any differently from the way you now feel while living in Quebec?

**Mr. Kingwell:** Can I answer you now, sir? The B. and B. Report, in my estimation, does not go far enough. It recommends the teaching of French and English in certain areas of other provinces than Quebec. I say that if you are going to go that far then go the whole way, and teach the whole of Canada, from the point of Newfoundland to Vancouver Island, English and French. In this way in 20 years you will have a bilingual nation. You will erase prejudice, and you will instill in the hearts of young Canadians a sense of Canadianism, which they do not have today.

**The Chairman:** I am inclined to agree with you. I have a daughter and a son-in-law who live in Dollard des Ormeaux, in Montreal.

**Mr. Kingwell:** Yes, where they had a riot about a school.

**The Chairman:** They may have had a riot about a school, but the situation is this, that my daughter sent my granddaughter to a French kindergarten because she thought it was an opportunity for her to learn French. When it came time for her to enter school they had a discussion, and they discovered they had a clear choice. They could either send her to a school where she could get her training wholly in French, or to a school where she could get her training wholly in English. On the other hand, there are 90,000 people there whose language in the ordinary concourse of business will be French, but who, when they send their children to school, find that they must be taught in English.

**Mr. Kingwell:** Yes, sir, but you and Senator Choquette are taking a few things out of context.

**The Chairman:** No, we are not. I am trying to say this, that when I hear of the Saint-Jean-Baptiste Society advocating these things I understand that what I am hearing is the point of view of a group of people who do not speak very differently from the way in which Premier Manning speaks. If you translate...

**Mr. Kingwell:** No one has asked me what I think of Premier Manning. Not too much.

You talk about a hundred years having gone by with nobody objecting. Nobody objected for a hundred years, but Premier Robarts was the man who initiated the first constitutional conference in Toronto, and he is the one who is making his government bilingual. He is making every effort to do it. Today, at a time when the rest of Canada is willing to become bilingual we find these people in Quebec—and I have quoted the items—saying that bilingualism is not going to satisfy them. I have quoted you the article. It is in here somewhere, but I cannot remember the page. I just say that when other provinces are going the way French Canada wants, French Canada is going unilingual in the Province of Quebec. Now, there is the injustice. At the time when they have the rest of Canada at least working on their behalf, and at least interested in their project, Quebec is saying: "We will go unilingual".

**Senator Choquette:** A few professors and the Saint-Jean-Baptiste Society.

**Mr. Kingwell:** Yes, and who are working hand in hand with the Liberal and the National Union parties. And don't forget, sir, that when Quebec's upper house, which is the last one in Canada, is eliminated or done away with, the Estates General of French Canada is slated to have the largest and most paramount voice in that house. Those are Premier Johnson's words. I did not utter them.

**Senator Choquette:** Well, we have your brief, but we are going to be called into the Senate in a few minutes.

**The Chairman:** Obviously, the brief has been carefully prepared and the people who have brought it here feel very deeply on the subject. We have to go into the Senate Chamber now for Royal Assent. I think that we

have the point of view that you wanted to bring to us, however, and on behalf of the committee I would like to thank you.

**Mr. Kingwell:** If I may just add a word, Mr. Chairman, I hope that an ounce of pre-

vention now will be the rule here rather than later on requiring a pound of cure. This is all we hope for.

**The Chairman:** Thank you, Mr. Kingwell.  
The committee adjourned.

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